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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DISTRICT

RICHARD MONTAÑEZ, an individual,  
Plaintiff,

vs.

PEPSICO, INC, a North Carolina Corporation;  
FRITO-LAY, INC., a Delaware Corporation;  
and DOES 1 through 30, inclusive,

Defendants.

Case No. CIVRS2400356

**COMPLAINT FOR:**

**(1) VIOLATION OF THE FAIR  
EMPLOYMENT AND HOUSING ACT  
(CAL. GOV'T CODE § 12900 *ET SEQ.*);  
(2) FRAUD—MISREPRESENTATION  
AND FALSE PROMISE;  
(3) DEFAMATION AT COMMON LAW  
AND PURSUANT TO CIV. CODE § 46;  
(4) INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE;  
(5) UNJUST ENRICHMENT;  
(6) VIOLATION OF CALIFORNIA'S  
UNFAIR COMPETITION LAW (CAL.  
BUS. & PROF. CODE § 17200 *ET SEQ.*)**

**DEMAND FOR JURY TRIAL**

## **INTRODUCTION**

1  
2 1. Plaintiff Richard Montañez (“Plaintiff” or “Mr. Montañez”) brings this lawsuit  
3 against Defendants PepsiCo, Inc. (“PepsiCo”), Frito-Lay, Inc. (“Frito-Lay”), and DOES 1-30  
4 (collectively “Defendants”) to bring an end to Defendants’ smear campaign against him.

5 2. Mr. Montañez is many things: the proud son of a Mexican immigrant, a high  
6 school dropout, a husband and father, a former janitor, the “Godfather of Latino Marketing,” and  
7 the inventor of Flamin’ Hot Cheetos—the product that launched Frito-Lay/PepsiCo’s multi-billion  
8 dollar Flamin’ Hot portfolio. But, above all, he is the embodiment of the American Dream.

9 3. The subject of two best-selling books and a hit movie, Mr. Montañez’s rags-to-  
10 riches success story is part of the cultural canon. The son of a Mexican immigrant, Mr. Montañez  
11 grew up in a poor migrant labor camp in Southern California, sharing a one-bedroom apartment  
12 with his parents and ten siblings. He struggled with reading and writing, as well as fitting in with  
13 his White classmates who, in the 1960s, were entirely unfamiliar with Mexican culture—not  
14 unlike the community at large.

15 4. Mr. Montañez eventually dropped out of school and worked menial jobs before  
16 joining Frito-Lay as a janitor in its Rancho Cucamonga plant. Prompted by then-CEO Roger  
17 Enrico’s directive that all employees “act like an owner,” Mr. Montañez felt empowered and  
18 motivated to invent new snacks with flavor profiles that would appeal to Hispanic palates, which  
19 had been historically overlooked.

20 5. The stars aligned when a machine used to produce Cheetos in the Rancho  
21 Cucamonga plant broke down, leaving a batch of unflavored Cheetos that had not been dusted  
22 with its normal cheese flavoring. Mr. Montañez took this batch home and, in his own kitchen,  
23 experimented by seasoning them with chili powder. He drew inspiration from elote—Mexican  
24 grilled corn seasoned with chili powder sold by local street vendors in his neighborhood.

25 6. Mr. Montañez continued to develop this spicy Cheetos concept until he had a snack  
26 that he believed would be very popular among, and could be marketed directly to, the Latino  
27 community. Armed with nothing but a \$3 tie, prototype and entrepreneurial spirit, he requested—  
28 and received—a meeting with none other than Frito-Lay/PepsiCo CEO himself, Roger Enrico.

1 Mr. Montañez pitched his product directly to Mr. Enrico and a group of Frito-Lay/PepsiCo's top  
2 executives.

3 7. They loved it.

4 8. Frito-Lay/PepsiCo agreed to develop and market Mr. Montañez's product, and  
5 while they attempted to cut Mr. Montañez out of parts of the process, they agreed with his strategy  
6 to focus market the product to a Latino consumer base—still the largest consumer base for the  
7 product.

8 9. Needless to say, Flamin' Hot Cheetos were a hit. Few, if any, other snack products  
9 have earned such a place in the cultural zeitgeist, spawning everything from songs to memes to  
10 Halloween costumes to nail art.<sup>1</sup>



11 what would you do if you hit the lottery?  
12 me:



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26 <sup>1</sup> Pictured, left: Pop Star Katy Perry dressed as a Hot Cheeto for Halloween. See Rebecca  
27 Macatee, *Katy Perry Is a Flamin' Hot Cheeto for Halloween—See the Pic!*, EONLINE.COM (Oct.  
28 31, 2014), <https://www.eonline.com/news/593727/katy-perry-is-a-flamin-hot-cheeto-for-halloween-see-the-pic>. Pictured, top right: Frito-Lay Memes, *Hot Cheetos!*, FACEBOOK.COM (Dec. 16, 2017), <https://www.facebook.com/fritolaymemes/posts/hot->

1           10. Of course, at the heart of this success lies Mr. Montañez himself. Consumers are  
2 not just buying Flamin' Hot Cheetos—they are buying Mr. Montañez's inspirational story. To  
3 them, Flamin' Hot Cheetos are a testament to the fact that, in this country, success need not be  
4 begotten of Whiteness, or socioeconomic status, or a formal education—it can be a product of true  
5 grit and hard work. Or, at least, that's what Flamin' Hot Cheetos *used* to stand for, before  
6 Defendants began defaming and discrediting the janitor-turned-executive they long championed.

7           11. Since Flamin' Hot Cheetos' inception, PepsiCo and Frito-Lay have been more than  
8 happy to leverage Mr. Montañez's story to drive the product's sales and popularity. For decades,  
9 Defendants recognized Mr. Montañez as the creator of Flamin' Hot Cheetos. Former CEOs of  
10 Frito-Lay Al Carey and Roger Enrico have expressly and publicly credited Mr. Montañez with the  
11 invention, and Defendants have, *inter alia*: (i) had Mr. Montañez give speeches across the country  
12 chronicling his invention of Flamin' Hot Cheetos (speeches that PepsiCo/Frito-Lay reviewed and  
13 approved) at large companies like Target and Walmart, and institutions like Harvard University  
14 and the University of Southern California, (ii) paid for his travel and lodging for his speaking tour,  
15 (iii) used his story to attract job candidates and inspire new employees, (iv) lauded his  
16 accomplishments in letters and notes from senior executives, and (v) promoted him up the ranks to  
17 Vice President of Multicultural Marketing & Sales at PepsiCo.

18           12. After 42 years touting Mr. Montañez's story, Defendants made an inexplicable  
19 about-face in 2021, making false and misleading statements to the Los Angeles Times that led to  
20 the defamatory article: *The Man Who Didn't Invent Flamin' Hot Cheetos*. See Sam Dean, *The*  
21 *Man Who Didn't Invent Flamin' Hot Cheetos*, LATIMES.COM (May 16, 2021),  
22 <https://www.latimes.com/business/story/2021-05-16/flamin-hot-cheetos-richard-montanez>.  
23 Among other falsehoods, Frito-Lay told the outlet: "None of our records show that Richard was  
24 involved in any capacity in the Flamin' Hot test market." *Id.* It also stated: "[T]he facts do not  
25 support the urban legend."

26  
27 [cheetos/1323624154450786/](https://www.latimes.com/business/story/2021-05-16/flamin-hot-cheetos-richard-montanez); pictured, bottom right: SBG San Antonio, *San Antonio nail artist*  
28 *creating 'flamin hot' designs*, CBSAUSTIN.COM (Feb. 26, 2019),  
<https://cbsaustin.com/news/local/san-antonio-nail-artist-creating-flaming-hot-designs>.

1           13. Relegating Mr. Montañez's life's work to an "urban legend" proved damaging  
2 beyond repair—both personally and professionally. Defendants' false statements concerning Mr.  
3 Montañez have made the public, and potential business partners, distrustful of him and his  
4 narrative. His livelihood, and mental health, have directly suffered as a result.

5           14. The Los Angeles Times article was published approximately two years after Mr.  
6 Montañez retired from Frito-Lay/PepsiCo, when he was pursuing a full-time career as a  
7 motivational speaker and consultant. Mr. Montañez had easily been able to parlay his public  
8 speaking experience at Frito-Lay/PepsiCo into this second career, as Defendants had, for decades,  
9 pushed him into press tours focused on his invention of Flamin' Hot Cheetos. Prior to the article's  
10 publication, Mr. Montañez was working with multiple speaking bureaus, booking over 35  
11 engagements per year at speaking fees ranging from \$10,000 to \$50,000. Since the article's  
12 publication, and Defendants' continued and relentless campaign to spread misinformation about  
13 him, Mr. Montañez has lost numerous partnerships, and seen a significant decrease in bookings,  
14 having booked just four speaking engagements this year.

15           15. In addition to speaking and consultancy engagements, Defendants' lies have cost  
16 Mr. Montañez other major opportunities. While several prestigious production companies were  
17 interested in developing a documentary about Mr. Montañez's life, those discussions have all  
18 fizzled due to Defendants' disparaging remarks. Indeed, Oscar-winning production company  
19 Lightbox approached Mr. Montañez about a documentary project just a few months ago, but was  
20 forced to abandon the project after Defendants reiterated that they would not participate in any  
21 project that aimed at explaining Mr. Montañez did, in fact, invent Flamin' Hot Cheetos.

22           16. For decades, Mr. Montañez lived the American Dream. Now, he's living the  
23 American Nightmare. After years of lauding Mr. Montañez to drive sales, Defendants' recent  
24 about-face—which can be only explained by some combination of a regime change, spite, and  
25 deep-seated racism—exemplifies the worst part of American history, exhibiting an attitude that  
26 says: Latinos with no higher education cannot be responsible for the success of a billion-dollar  
27 brand.

28           17. Ultimately, Mr. Montañez said it best: "[Y]ou're going to love your company more

1 than they will ever love you.” Ellise Shafer, *Disputed Flamin’ Hot Cheetos Inventor Responds to*  
2 *Frito-Lay’s Claims: ‘I Was Their Greatest Ambassador’*, Variety.com (May 16, 2021),  
3 <https://variety.com/2021/film/news/richard-montanez-flamin-hot-cheetos-responds-1234974227/>.

4 Defendants have proved as much to be true, and Mr. Montañez now seeks redress through the  
5 present action for violations of the Fair Employment and Housing Act (Cal. Gov’t Code § 12900  
6 *et seq.*) and Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*), as well as for  
7 fraud, defamation, intentional interference with prospective economic advantage, and unjust  
8 enrichment.

9 **PARTIES**

10 18. Plaintiff Richard Montañez is a motivational speaker and a former senior marketing  
11 executive for Defendants PepsiCo, Inc. and Frito-Lay, Inc. He is a California citizen who resides  
12 in Rancho Cucamonga, California.

13 19. Defendant PepsiCo, Inc. (“PepsiCo”) is an American multinational food, snack,  
14 and beverage corporation. PepsiCo is a North Carolina corporation with its principal place of  
15 business in Purchase, New York, and is the parent company of Defendant Frito-Lay, Inc.

16 20. Defendant Frito-Lay, Inc. (“Frito-Lay”) is a Delaware corporation with its principal  
17 place of business in Plano, Texas and is a wholly owned subsidiary of Defendant PepsiCo. Frito-  
18 Lay markets and sells Flamin’ Hot Cheetos snacks.

19 21. The true names, identities, or capacities, whether individual, corporate, associate, or  
20 otherwise, of Defendants DOES 1 through 30, inclusive, are unknown to Plaintiff, who therefore  
21 sues said Defendants by such fictitious names. When the true names, identities, or capacities of  
22 such fictitiously designated defendants are ascertained, Plaintiff will ask leave of this Court to  
23 amend this Complaint to insert the said true names, identities, and capacities, together with the  
24 proper charging allegations.

25 22. Plaintiff is informed and believes and thereon alleges that each of the Defendants  
26 sued herein as a DOE is responsible in some manner and liable herein for negligent, wanton,  
27 reckless, and tortious conduct, and/or strict liability, and by such wrongful conduct, proximately  
28 caused Plaintiff’s injuries and damages.

23. Plaintiff is informed and believes and thereon alleges that at all relevant times each of the Defendants was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for the conduct of them. Plaintiff performed services for each and every one of the Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff, either directly or indirectly, and of the manner in which Defendants' business was conducted.

24. At all times herein mentioned, Defendants (whether or not specifically identified or designated herein as a DOE Defendant), and each of them, were the agents, employees, servants, partners, independent contractors, joint venturers, and/or participants with all other Defendants, and with each other, and in doing the things hereinafter mentioned, were agents, employees, servants, partners, and joint venturers and/or acted with the consent and permission of the co-Defendants, and each of them.

#### **JURISDICTION AND VENUE**

25. The Court has jurisdiction over the subject matter of this action pursuant to California Code of Civil Procedure Section 410.10.

26. Venue in this Court is proper pursuant to California Code of Civil Procedure Section 395(a).

#### **FACTUAL ALLEGATIONS**

##### **I. Mr. Montañez's Early Years, Mexican Heritage, and Entrepreneurial Spirit**

27. Mr. Montañez comes from humble origins. The son of a Mexican immigrant, Mr. Montañez grew up in a migrant labor camp in Southern California. For much of this time, he shared a one-bedroom apartment with his parents and ten siblings. Eventually, the family of twelve moved into an 800-square-foot home in the community. As Mr. Montanez put it, the family was poor, but "it was a fun kind of poor." *Hot Cheetos*, NPR.ORG (May 12, 2021), <https://www.npr.org/transcripts/996228628>. Tight as quarters may have been, it fostered a tight-knit family unit. Moreover, living in constant close proximity to other nearby migrant laborers, many of whom were also Mexican, ensured that Mr. Montañez grew up immersed in Mexican culture and forged a strong connection with it.



1           28.     Although it grounded his identity and sense of self, Mr. Montañez's Mexican  
2 heritage also presented him with adversity early on. While attending grade school in the 1960s,  
3 Mr. Montañez had difficulty fitting in. At that time, many of his classmates were entirely  
4 unfamiliar with Mexican culture and cuisine.

5           29.     One day, Mr. Montañez's mom packed him a burrito for his school lunch. At lunch  
6 time, when Mr. Montañez pulled out the burrito from his bag, the other students—most of whom  
7 had never seen a burrito before—stared at him in confusion. Mr. Montañez sheepishly hid the  
8 burrito away in his bag.

9           30.     Mr. Montañez begged his mom to pack him a bologna sandwich for lunch so that  
10 he would fit in with the other kids at school. She refused, saying: “[N]o, mijo, this is who you  
11 are.” *Id.* Mr. Montañez took her words to heart, and this lesson in having pride in his heritage  
12 proved fundamental.

13           31.     The next day, Mr. Montañez's mom packed him *two* burritos—one for him to eat  
14 and the other for him to use to make a friend. Rather than shying away from his Mexican heritage,  
15 Mr. Montañez embraced it. Before long, the young Mr. Montañez tapped into a latent flair for  
16 entrepreneurship, and began selling his mom's burritos at school for \$0.25 apiece.

17           32.     While Mr. Montañez made significant progress at school socially, he discovered  
18 other elements to be particularly challenging. Throughout his early years, try as he might, Mr.  
19 Montañez struggled with reading and writing. Eventually, Mr. Montañez dropped out and began  
20 working labor-intensive jobs to earn what money he could. While he would later go on to earn his  
21 GED, by the time he was 18 years old, Mr. Montañez had already worked a series of low-wage  
22 jobs including slaughtering chickens, picking grapes, and washing cars.

23     **II.     Mr. Montañez Gets His Start at Frito-Lay as a Janitor.**

24           33.     In 1976, while working at the car wash, Mr. Montañez learned from a friend that  
25 Frito-Lay was hiring at its Rancho Cucamonga plant. Determined to do more with his life than  
26 work one menial job after another, Mr. Montañez set out to apply. Given his struggles with  
27 reading and writing, filling out the application posed a considerable challenge to Mr. Montañez, so  
28 he enlisted the help of his future wife, Judy, to complete the task.



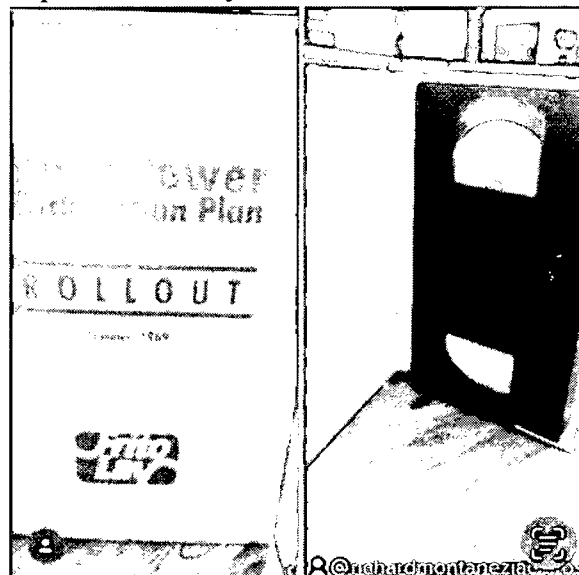
1           34. To his elation, his application was accepted, and Frito-Lay hired him as a janitor.  
2 Mr. Montañez rushed to tell his grandfather the news, and he responded: “[W]hen you mop that  
3 floor, you make sure that it shines. And when people see it, they know that a Montañez mopped  
4 it.”

5           35. This is precisely the work ethic Mr. Montañez applied to this job, and every job he  
6 held thereafter.

7           36. Mr. Montañez took initiative. Although he worked in sanitation, when anyone  
8 needed a break on the production line, he would volunteer to fill in. He took care to learn about  
9 the business, listening in on sales meetings and taking notes. Eventually, he was promoted to  
10 machine operator, although he simultaneously remained on the sanitation crew.

11           37. In the 1980s, Mr. Montañez had more opportunities to show initiative. Frito-Lay  
12 implemented a Method and Improvement program whereby employees (in any station) were  
13 encouraged to come up with ideas for new products or improvements to existing products. In  
14 exchange for their efforts, employees were paid \$1 per idea. At a time where every dollar  
15 counted, Mr. Montañez began submitting ideas for new products to Frito-Lay.

16           38. This dovetailed with 38-year-old Roger Enrico’s appointment as CEO of PepsiCo.  
17 In 1989, Mr. Montañez was inspired by a videotape issued as part of PepsiCo/Frito-Lay  
18 SharePower Stock Option Plan Rollout (pictured below) wherein Mr. Enrico encouraged  
19 employees at all levels of PepsiCo/Frito-Lay to “act like owners.”



1           39. Mr. Montañez took Mr. Enrico's message to heart, and felt empowered and  
2 motivated to invent new snacks with certain flavor profiles that would better match the taste  
3 palates of the Hispanic community, which had not been well-served by the flavor choices  
4 previously available to them.

5           40. Thereafter, Mr. Montañez, with help from his wife Judy, began studiously working  
6 on a number of snack foods and flavors—including spicy, lime and chile, and cinnamon—  
7 intended to appeal to Hispanic consumers. Their creations included a wet salsa and a spicy dry  
8 chili powder used to season Cheetos, Fritos, and popcorn snacks. They also developed Fritos  
9 snacks flavored with lime and chile, as well as Doritos flavored with cinnamon.

10 **III. Mr. Montañez Creates Flamin' Hot Cheetos.**

11           41. In the case of what would become the ubiquitous Flamin' Hot Cheetos, the  
12 development process started when a machine used to produce Cheetos in the Rancho Cucamonga  
13 plant broke down. This breakdown left a batch of unflavored Cheetos that had not been dusted  
14 with the normal cheese flavoring. Mr. Montañez took this unflavored batch of Cheetos home and,  
15 in his own kitchen, experimented by seasoning them with chili powder. He drew inspiration from  
16 elote—Mexican grilled corn seasoned with chili powder. Mr. Montañez continued to develop this  
17 spicy Cheetos concept until he created what he believed to be a snack that would be very popular  
18 among, and could be marketed directly to, the Latino community.

19           42. In 1991, Mr. Enrico became the CEO of Frito-Lay. That same year, Mr. Montañez  
20 called up Mr. Enrico's office to pitch his spicy Cheetos creation as well as the Hispanic marketing  
21 concept initially aimed at the local Hispanic communities in and around Mr. Montañez's native  
22 Southern California. After all, it was Mr. Enrico's inspirational video message that had  
23 encouraged Mr. Montañez to take ownership of the business and personally create a new  
24 potentially impactful product.

25           43. Mr. Enrico's assistant, Patti Rueff, recalls being shocked when she received the  
26 phone call. She and Mr. Montañez recounted the exchange with NPR:

27           [NPR Producer]: First name in the directory, the CEO - Roger Enrico. His assistant  
28 answers, a woman named Patty Roof (ph).

1 Hello?  
2 MONTAÑEZ: Hi. This is Richard Montañez. Can I talk to the CEO?  
3 PATTY ROOF [SIC]: So I asked him, who do you work for? Where do you work?  
4 GONZALEZ: This is Patty.  
5 MONTAÑEZ: So I said, I work in California - Frito-Lay. She says oh, OK. You're  
6 the president of California?  
7 ROOF: And he kept saying, no, I work at the Cucamonga plant.  
8 MONTAÑEZ: Oh, you're the senior vice president of Southern Cali (ph) - I said,  
9 no, I work inside the plant.  
10 ROOF: Are you in sales? And, no, I'm not in sales. Are you in research and  
11 development? No. Product development? No, I'm not in product development.  
12 MONTAÑEZ: Are you have the plant director? No. Plant manager? No. What are  
13 you?  
14 ROOF: You know, I'm a janitor. I almost fell out of my chair.  
15 GONZALEZ: Richard tells Patty, I have an idea for the CEO.  
16 ROOF: You know, the hotter the food, the more the Latinos like it. And it's, you  
17 know - we like spicy food, and Doritos and Cheetos just don't do it enough. So I  
18 put him through to Roger, and they spoke on the phone.  
19 MONTAÑEZ: He said, I understand you have an idea for me. He goes, I'll be there  
20 in two weeks. I want to hear it.

21 *Hot Cheetos*, NPR.ORG (May 12, 2021), <https://www.npr.org/transcripts/996228628>.

22 44. Although Mr. Montañez was a mere plant worker with no formal experience in the  
23 research and development of snack foods, his ideas intrigued Mr. Enrico enough that Mr. Enrico  
24 scheduled a time for Mr. Montañez to present his ideas to a group of Frito-Lay's top executives.

25 45. Mr. Montañez spent the next couple of weeks studying whatever marketing  
26 materials he could find in the local public library, creating a product design for his spicy Cheetos  
27 snack, and putting together a presentation for the meeting. These efforts culminated in Mr.  
28 Montañez donning a \$3 tie, and walking into the meeting to pitch his snack and marketing  
concept.

46. At one point, a marketing executive asked Mr. Montañez: How much market share  
is up for grabs on this item? Mr. Montañez was "ready to just run off the stage, so with the most  
ridiculous smile and statement, I raised out my arms, opened them wide up and I said, this much  
market share. And I could hear the marketing executives kind of like, oh, no, did he just – that's a

1 ridiculous statement.” But Mr. Enrico saw the potential. He said: “Ladies and gentlemen, do you  
2 realize that Richard just showed us how to get that much market share?” He opened his arms as  
3 wide as Mr. Montañez. Mr. Enrico, the CEO, was on board.

4 47. While this successful pitch meeting was not met with any immediate promotion,  
5 Mr. Montañez got Frito-Lay’s approval to move forward with his spicy Cheetos and his Hispanic-  
6 geared marketing concepts.

7 48. Shortly thereafter, Defendants set Mr. Montañez on what would prove to be, in  
8 essence, a decades-long public speaking tour in which he chronicled his pitch for what would  
9 become Flamin’ Hot Cheetos, one of the most successful snack foods in the country. Indeed, in  
10 1991, Mr. Montañez was chosen to travel to Washington, D.C., on behalf of PepsiCo and Frito-  
11 Lay to engage with a number of Congressmen and tell them how he, a janitor, came up with the  
12 next new product for the conglomerate. PepsiCo and Frito-Lay celebrated Mr. Montañez’s  
13 innovation in creating this new spicy Cheetos snack, and were never shy about touting his  
14 accomplishments to the public.

15 **IV. Despite Hostility and Discrimination from Frito-Lay’s R&D Group, Mr. Montañez**  
16 **Successfully Tests His Spicy Cheetos Concept and Brings It To Market Nationwide.**

17 49. While Mr. Montañez’s spicy seasoning was developed out of his home kitchen, this  
18 was not conducive to the large scale production necessary to conduct a meaningful test market, let  
19 alone nationwide distribution and sale. Accordingly, Mr. Montañez was directed to Frito-Lay’s  
20 research and development (“R&D”) department in Texas to further develop his spicy Cheetos  
21 concept for mass production.

22 50. Unfortunately, he met with resistance from Frito-Lay’s R&D group. Frito-Lay’s  
23 R&D scientists exhibited disapproval and hostility toward Mr. Montañez, turning their noses up at  
24 his development of a spicy Cheeto snack in his home kitchen, rather than their state-of-the-art  
25 R&D laboratories.

26 51. R&D personnel continually asked Mr. Montañez to make and send more samples  
27 of his spicy flavoring, but excluded him from any discussions that related to his seasoning  
28 formulation, or that involved Frito-Lay’s seasoning supplier, McCormick. Dissatisfied that Mr.

1 Montañez—a poor, uneducated Mexican plant worker and janitor—had successfully developed a  
2 new product, Frito-Lay’s R&D personnel completely shut out Mr. Montañez from the  
3 development process.

4 52. In addition to excluding Mr. Montañez from further development of his spicy  
5 Cheetos seasoning, Frito-Lay’s R&D department refused to invest the same levels of funding and  
6 manpower in this product that would typically be employed in developing a new product. For  
7 example, while new product development typically requires approximately ten R&D scientists to  
8 ensure proper manufacturing and good product quality—e.g., proper flavoring coverage, proper  
9 cooking temperature, balanced salt content, proper oil levels—only one was sent to Rancho  
10 Cucamonga to help develop Mr. Montañez’s spicy Cheetos snack.

11 53. Despite the Frito-Lay R&D group’s underwhelming support for development of  
12 Mr. Montañez’s new spicy Cheetos snack, eventually, a batch of 50-pound bags of Mr.  
13 Montañez’s spicy seasoning arrived from McCormick to the Rancho Cucamonga plant.

14 54. Mr. Montañez and his colleagues at the Rancho Cucamonga plant used these bags  
15 to produce the initial test batch of about 2,000 cases, in order to test the product in South El Monte  
16 and Paramount for about three months. The test markets were successful—due in no small part to  
17 Mr. Montañez’s guerilla marketing, as he encouraged friends and family to buy the product and  
18 talk it up in-store. Mr. Montañez also began giving the product away at parks, car shows,  
19 churches and the like. These exhaustive efforts paid off. In 1992, Frito-Lay rolled out Flamin’  
20 Hot Cheetos nationwide.

21 55. While Defendants have attempted to roll out a counter-narrative in recent years,  
22 their version of events simply does not hold up. Al Carey, former CEO of Frito-Lay, was Vice  
23 President of National Sales and Division President of Frito-Lay West during the time Mr.  
24 Montañez was developing Flamin’ Hot Cheetos. In the wake of the recent controversy, he has  
25 again publicly explained that Mr. Montañez invented the product. *See, e.g., Sam Dean, The Man*  
26 *Who Didn’t Invent Flamin’ Hot Cheetos, supra* (“Carey insisted that Montañez is the creator of  
27 Flamin’ Hot Cheetos.”)

28 56. According to statements made by Frito-Lay and its former employees, beginning in

1 or around 1990, Frito-Lay's R&D group had started testing spicy snacks using the name Flamin'  
2 Hot in certain Midwestern markets such as Detroit, Chicago, and Houston in light of the rising  
3 popularity of spicy snacks among African American consumers. Mr. Montañez was unaware of  
4 these product developments or test markets, and has never claimed to have been a part of them.  
5 Instead, Mr. Montañez was focused on developing his spicy seasoning out of his home kitchen  
6 while drawing inspiration from Mexican street food and developing a marketing campaign that  
7 would appeal to Hispanic communities.

8 57. At the time, Frito-Lay was divided into five geographic divisions that were each  
9 run independently with their own executive teams. Mr. Montañez, who worked within the Frito-  
10 Lay West division, was unaware of what the other divisions—including the Midwest (or  
11 Metroline) division, which carried out test markets in their own region—were doing. Only  
12 recently has it become clear that the discriminatory and hostile treatment that Mr. Montañez  
13 endured from Frito-Lay's R&D group was intended to discourage or disadvantage the  
14 development of Mr. Montañez's spicy Cheetos in order to heavily favor the Midwest division's  
15 formulation, spearheaded by more traditional R&D employees.

16 58. Indeed, in 1993, at the invitation of Dennis Heard, Mr. Montañez scheduled a  
17 three-day trip to the Frito-Lay R&D center in Irving, Texas. Mr. Heard showed Mr. Montañez the  
18 facilities, including the laboratories and factories within the R&D complex, and told Mr.  
19 Montañez that he needed a Ph.D. to do this type of work. Mr. Heard told Mr. Montañez to stop  
20 submitting new product ideas to Mr. Enrico because Mr. Enrico kept rerouting those products to  
21 Mr. Heard and the R&D department. Mr. Heard's secretary even insisted that Mr. Montañez refer  
22 to Mr. Heard as "Dr. Heard." Mr. Montañez's trip was scheduled for three days, but was abruptly  
23 ended after only a day and a half. At the time, Mr. Montañez had no reason to suspect that these  
24 actions were borne of discriminatory animus, because Defendants were still publicly crediting him  
25 with the invention of Flamin' Hot Cheetos. Defendants' recent heel-turn has made clear that R&D  
26 was working to stifle and discredit Mr. Montañez from the outset.

27 59. In any event, after his successful test market and the nationwide roll out of Flamin'  
28 Hot Cheetos, the product's popularity (and sales) took off. Flamin' Hot Cheetos currently

1 generate hundreds of millions of dollars in annual revenue for Frito-Lay and PepsiCo, and the  
2 snack itself has gone on to become a cultural icon, particularly among the Latino community.  
3 (See, e.g., Fernando Hurtado, *From chips to memes: How Flamin' Hot Cheetos became a cultural*  
4 *icon for U.S. Latinos*, NBCCHICAGO.COM (updated on Sept. 14, 2023)  
5 [https://www.nbcchicago.com/celebrating-hispanic-heritage/from-chips-to-memes-how-flamin-hot-](https://www.nbcchicago.com/celebrating-hispanic-heritage/from-chips-to-memes-how-flamin-hot-cheetos-became-a-cultural-icon-for-u-s-latinos/3228113/)  
6 [cheetos-became-a-cultural-icon-for-u-s-latinos/3228113/](https://www.nbcchicago.com/celebrating-hispanic-heritage/from-chips-to-memes-how-flamin-hot-cheetos-became-a-cultural-icon-for-u-s-latinos/3228113/).) They have inspired rap songs and  
7 music videos, social media characters and memes, any number of Flamin' Hot flavored foods  
8 (even pizza and ice cream), merchandise, and apparel. Even pop superstar Katy Perry once  
9 donned a Flamin' Hot Cheeto costume for a celebrity Halloween party in 2014.

10 **V. Mr. Montañez's Continuing Success at Frito-Lay**

11 60. In 1993 and 1994, Mr. Montañez continued to innovate and create new snack food  
12 products. He followed up on his creation of Flamin' Hot Cheetos by launching the Sabrositas line  
13 of snacks that were also developed for and marketed to Hispanic consumers. The Sabrositas line  
14 included snacks such as Flamin' Hot Popcorn, Flamin' Hot Fritos, Lime and Chile Fritos, and  
15 buñuelito-style Doritos.

16 61. Roberto Siewczynski, an outside advertising consultant involved with the test  
17 market for the Sabrositas marketing campaign, visited the Rancho Cucamonga plant and was  
18 surprised to learn that the Sabrositas project was driven and led by Mr. Montañez and other  
19 production/distribution workers, without the involvement of traditional company management. As  
20 he told the Los Angeles Times: "It was, 'Hey, the plant really wants to do this; Richard really  
21 wants to do this,' and they cut out a lot of the traditional management.'" Sam Dean, *The Man*  
22 *Who Didn't Invent Flamin' Hot Cheetos*, *supra*.

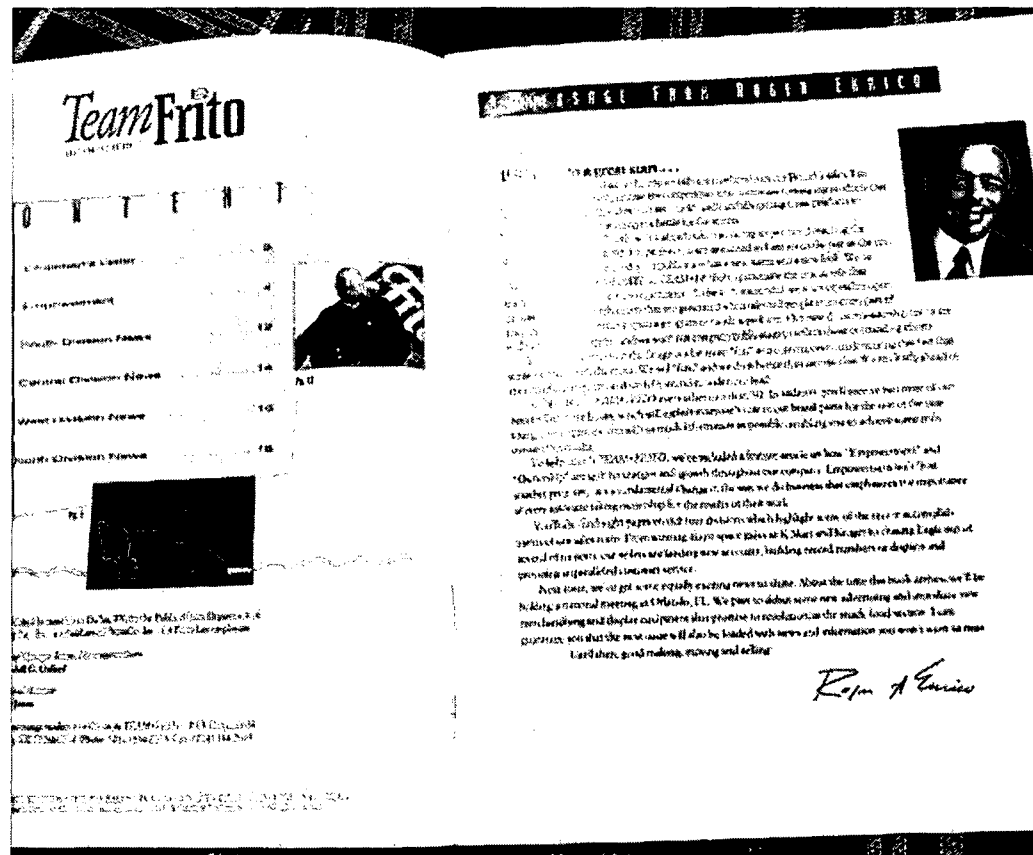
23 62. Throughout his time at Frito-Lay and PepsiCo, despite the discrimination and  
24 obstacles he faced, Mr. Montañez continued to rise through the ranks and received recognition for  
25 his enormous contributions to the company, including, but not limited to, the following:  
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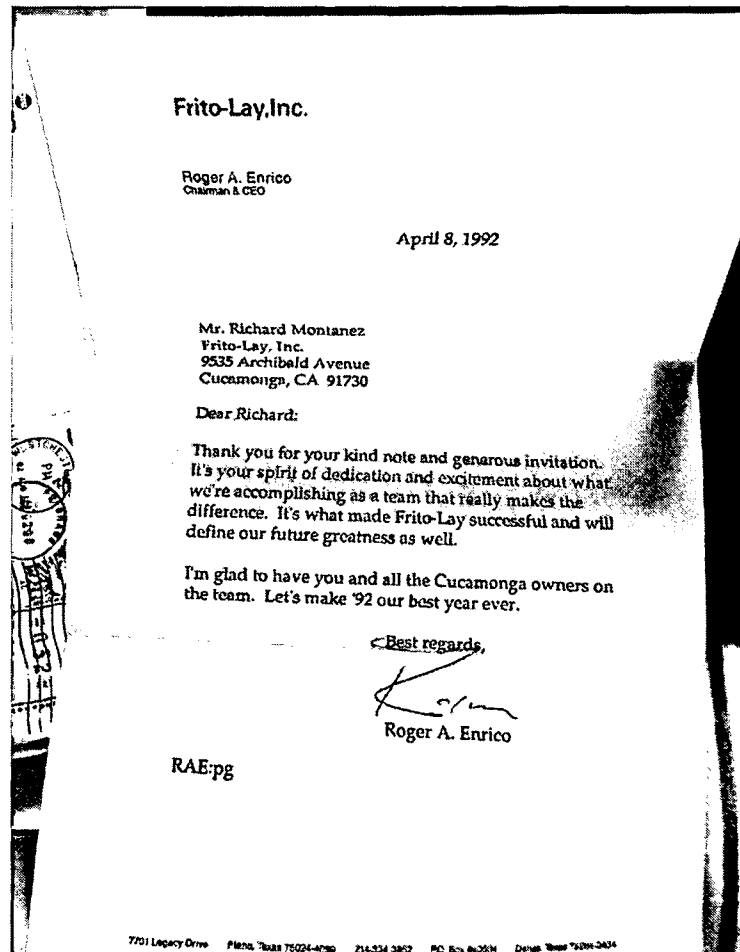
- 1 a. Undated handwritten note from Mr. Enrico stating: "I am as proud of you  
2 as I would be if we were born brothers. Keep up the great work you do and,  
3 just as important, never lose your enthusiasm for self-growth. It is a real  
4 inspiration to all who come in contact with you."



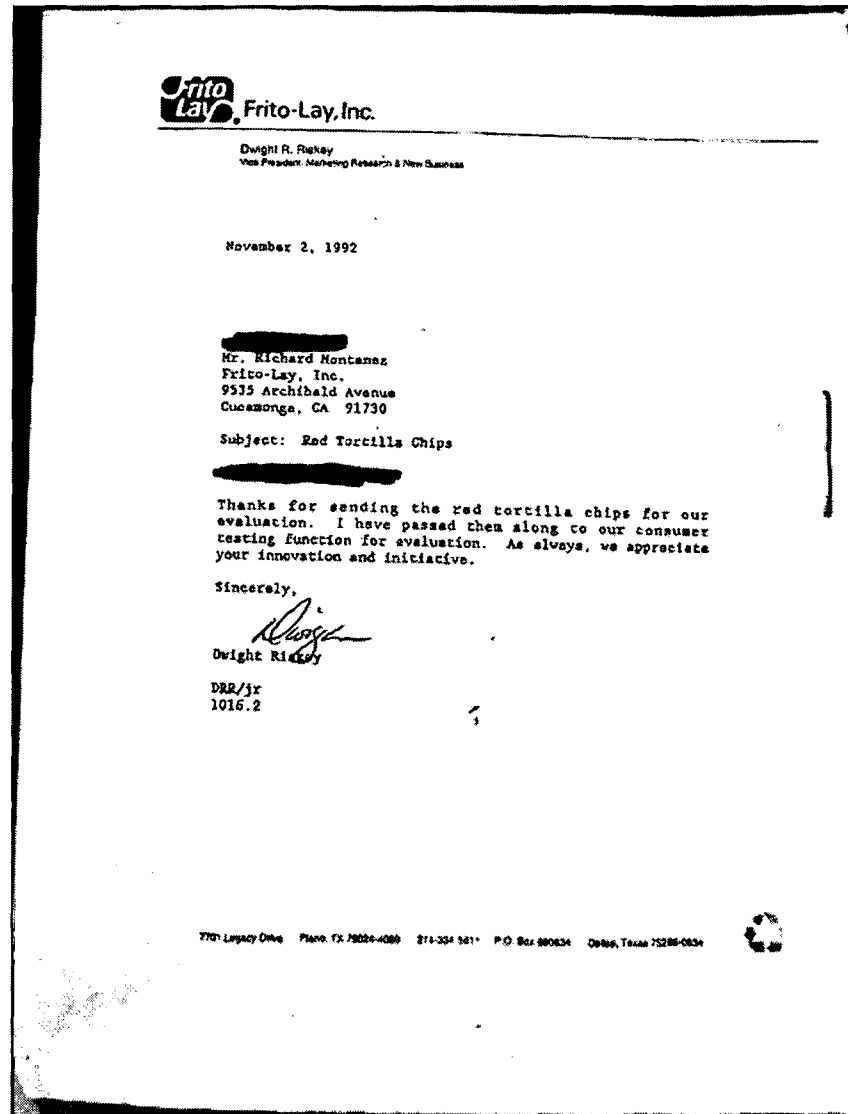
b. February 1992 publication entitled TEAM FRITO that features Mr. Montañez just below the table of contents and on the opposing page of a message from Mr. Enrico, advertising an article regarding "Empowerment." As Mr. Enrico writes on the opposing page: "To help launch TEAM FRITO, we've included a feature article on how 'Empowerment' and 'Ownership' are igniting changes and growth throughout our company. Empowerment isn't just another program,' it's a fundamental change in the way we do business that emphasizes the importance of every associate taking ownership for the results of their work"—something Mr. Montañez had become an expert in.



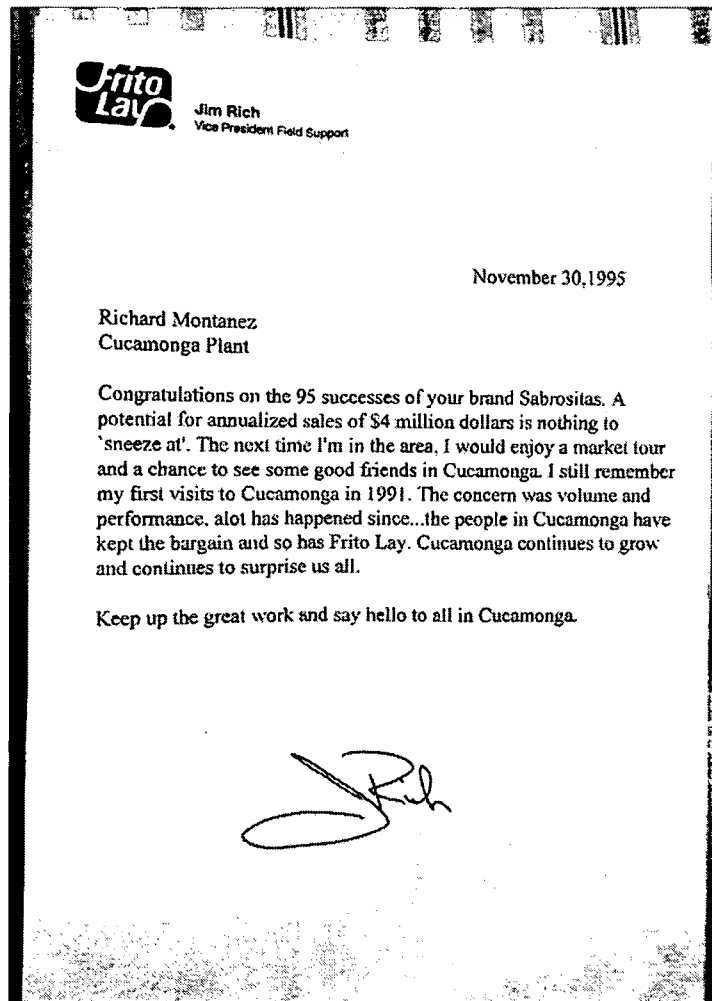
- c. April 8, 1992 letter from Mr. Enrico acknowledging that Mr. Montañez's spirit of dedication and excitement "really makes the difference" and that he is glad to have Mr. Montañez and all the Cucamonga owners on the team:



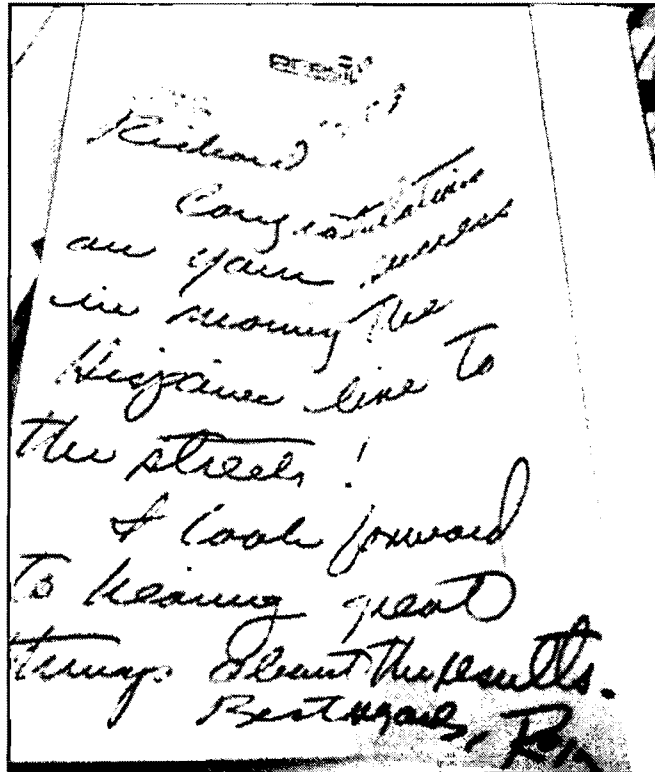
d. November 2, 1992 letter from Dwight R. Risky, Frito-Lay Vice President of Marketing Research & New Business, thanking Mr. Montañez for sending red tortilla chips for evaluation and noting: "As always, we appreciate your innovation and initiative."



e. November 30, 1995 letter from Jim Rich, Frito-Lay Vice President of Field Support, congratulating Mr. Montañez on the success of his Sabrositas brand and noting "Cucamonga continues to grow and continues to surprise us all."

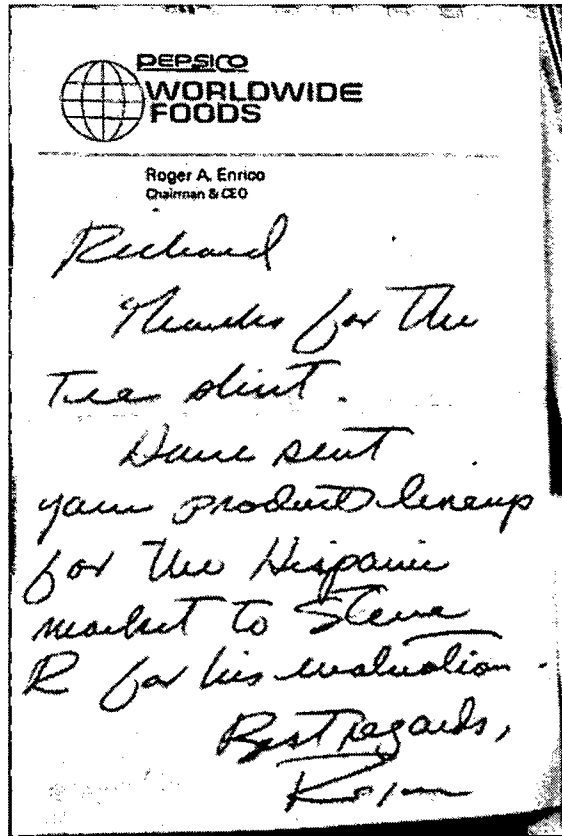


f. Undated handwritten from Mr. Enrico stating: "Congratulations on your success in moving the Hispanic line to the streets! I look forward to hearing great things about the results."



A photograph of a handwritten note on lined paper. The text is written in cursive and reads: "Richard", "Congratulations", "on your success", "in moving the", "Hispanic line to", "the streets!", "I look forward", "to hearing great", "things about the results.", "Best regards, R.". The note is slightly tilted and has some ink smudges.

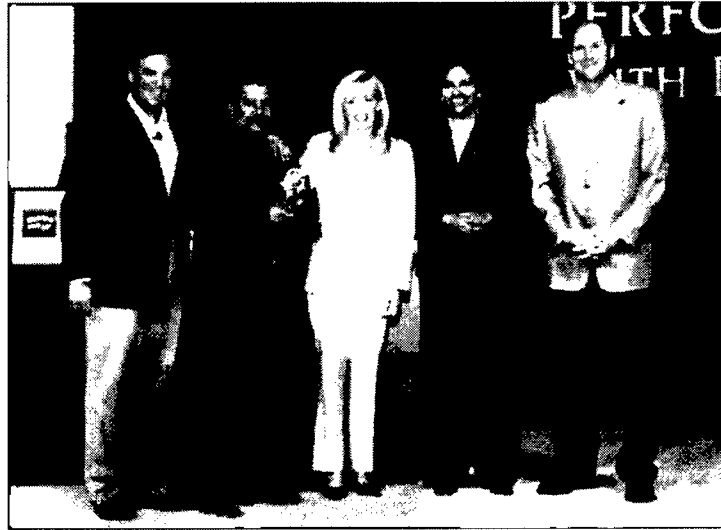
- g. Undated handwritten note from Mr. Enrico stating: "Have sent your product lineup for the Hispanic market to Steve R. for his evaluation."



- h. A 2003 dinner gala in Washington, D.C., with top Latino leaders from around the country, which Mr. Montañez attended with then PepsiCo Chairman and CEO, Steven Reinemund.



- i. A 2007 award ceremony honoring Mr. Montañez at a PepsiCo sales meeting in front of thousands of PepsiCo employees pictured below with then-PepsiCo CEO, Ms. Nooyi; PepsiCo President, John Compton; PepsiCo President of Global Sales, Tom Greco; and PepsiCo Senior Vice President of Multicultural Sales and Marketing, Marie Quintana.



- j. A 2016 special award dinner in Mr. Montañez's honor celebrating the 40th anniversary of his employment at PepsiCo and attended by PepsiCo executives including Kirk Tanner, President and Chief Operating Officer for North America Beverages, and PepsiCo's head of HR.

63. In 1992, after the launch of Flamin' Hot Cheetos, Defendants sent Mr. Montañez across the country to tell his story at a number of plants, including ones that were performing poorly, in order to inspire the workforce and boost morale. Defendants deployed this tactic numerous times over the years; for instance, from 2009 to 2013, Frito-Lay again sent Mr. Montañez on another nationwide tour to tell his story of the invention of Flamin' Hot Cheetos and to address unions at various plants.

64. In 1993, Mr. Enrico awarded Mr. Montañez the Chairman's Award, PepsiCo's highest honor. He went on to receive the award three more times (in 1995, 1997, and 2007), more than any other Frito-Lay/PepsiCo employee.

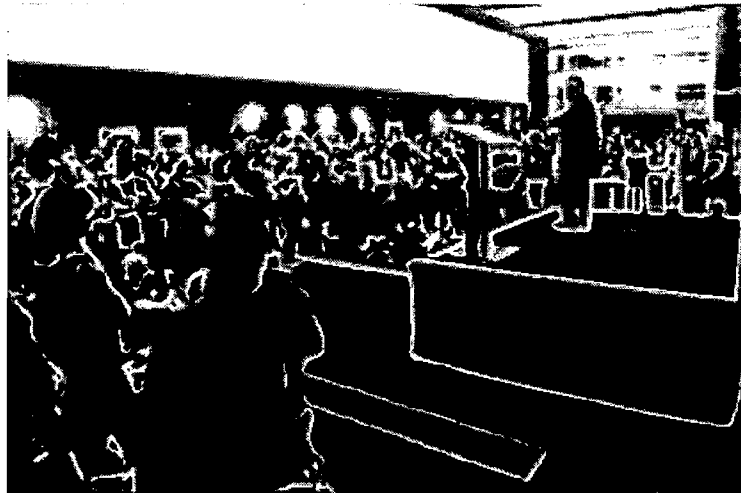
1        65. In 2000, more than twenty years after he first started at Frito-Lay/PepsiCo, and  
2 after he created dozens of hit snack products, Mr. Montañez was finally promoted off the line to  
3 become Frito-Lay's Southern California Business Development Manager. He was later promoted  
4 to Vice President of Multicultural Marketing & Sales at PepsiCo.

5        66. In 2007, with the support of PepsiCo and Frito-Lay, Mr. Montañez began publicly  
6 telling his story about his invention of Flamin' Hot Cheetos, from the development of the  
7 seasoning in his home kitchen to becoming entrenched as a globally recognized and iconic snack.  
8 This led to speaking engagements at corporate retailing giants such as Walmart and Target, as well  
9 as educational institutions such as Harvard University and the University of Southern California.  
10 Defendants not only pushed Mr. Montañez to give these speeches, they expressly reviewed and  
11 approved the same.

12        67. Photos of some of Mr. Montañez's engagements representing, and for the benefit  
13 of, PepsiCo and Frito-Lay include the following:

- 14            a. A 2012 fireside chat at Target headquarters with CEO Brian Cornell to  
15 share the story of Mr. Montañez's career. Mr. Cornell personally contacted  
16 then CEO of PepsiCo, Indra Nooyi, for permission to have Mr. Montañez  
17 participate.





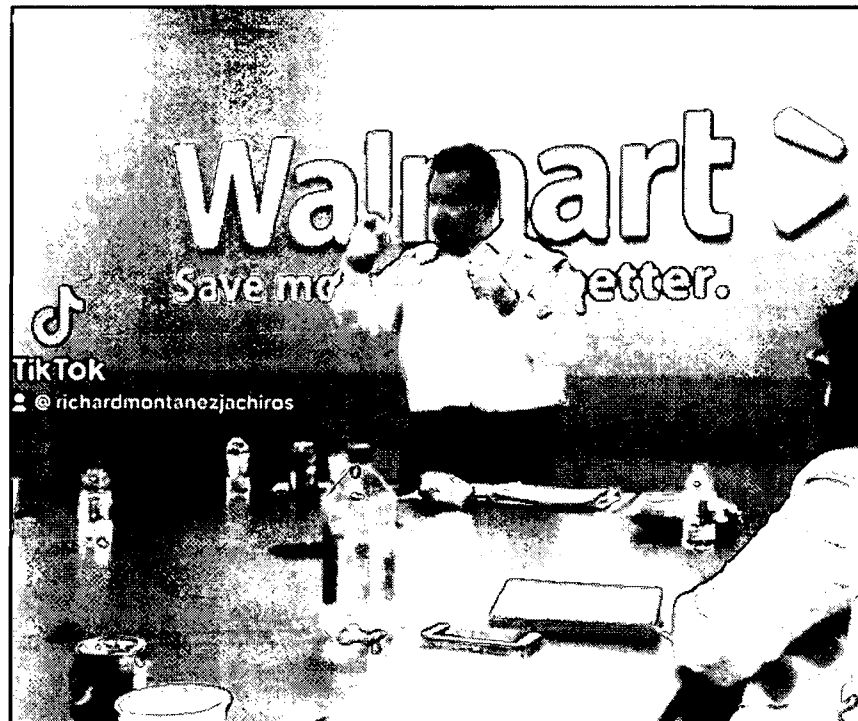
- b. A 2013 conference in Miami with Ms. Nooyi to honor top Hispanic business leaders.



- c. A 2012 interview in Atlanta with Soledad O'Brien, with whom Mr. Enrico, in an earlier interview, had shared Mr. Montañez's story.



d. A 2005 speaking engagement at Walmart headquarters to share the story of his career. Between 2003 and 2016, Mr. Montañez was invited by two different Walmart CEOs to be a featured speaker at corporate events.



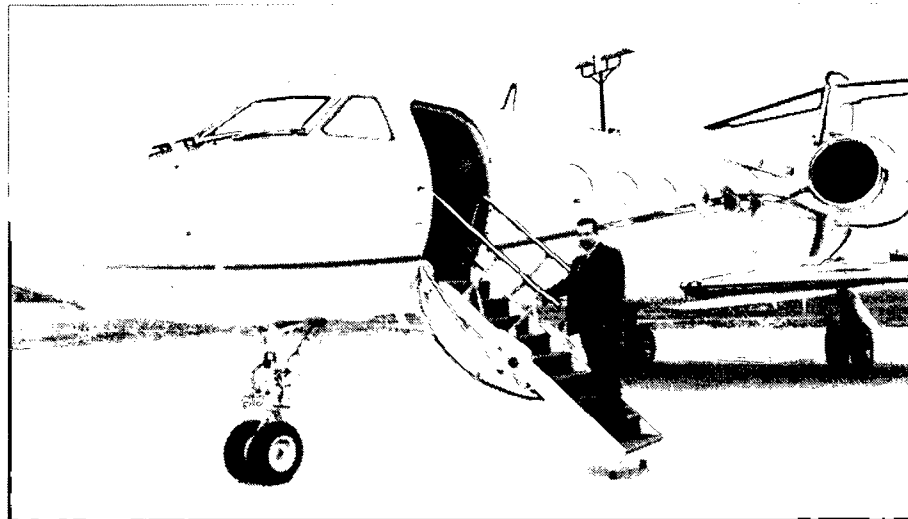
- e. A 2018 speaking engagement at Harvard University where Mr. Montañez spoke alongside Walmart CEO Doug McMillon.



- f. A private presentation at UCLA with Ms. Nooyi and guests David C. Lizárraga and Priscilla Lizárraga of TELACU, a community development corporation committed to serving, empowering, advancing, and creating self-sufficiency within urban, underserved communities.



1 g. PepsiCo and Frito-Lay also made travel arrangements for Mr. Montañez's  
2 speaking engagements, including via private jet. Exemplar photographs are  
3 provided below, which picture Mr. Montañez, along with PepsiCo CEO Al  
4 Carey and others, traveling to New York to attend a gala put on by the  
5 Hispanic Association on Corporate Responsibility.



26 68. One thing is clear: over the following decade, PepsiCo and Frito-Lay did not  
27 dispute Mr. Montañez's story of inventing Flamin' Hot Cheetos. Quite the contrary; they gave  
28 *Mr. Montañez credit* for inventing the product. PepsiCo and Frito-Lay went so far as to include

1 Mr. Montañez's story as an inspirational example in training videos for new employees, paid for  
2 his flights and hotels to travel around the country and tell his story, and approved all press events  
3 and speeches that Mr. Montañez gave regarding his creation of Flamin' Hot Cheetos. The public  
4 loved Mr. Montañez's life story—from growing up poor with no high school diploma, to creating  
5 the incredibly popular Flamin' Hot Cheetos, to becoming a top-level executive at a major  
6 international company. PepsiCo and Frito-Lay were happy to use Mr. Montañez as an  
7 inspirational brand ambassador to build invaluable public goodwill, sell more products, and reap  
8 the financial benefits.

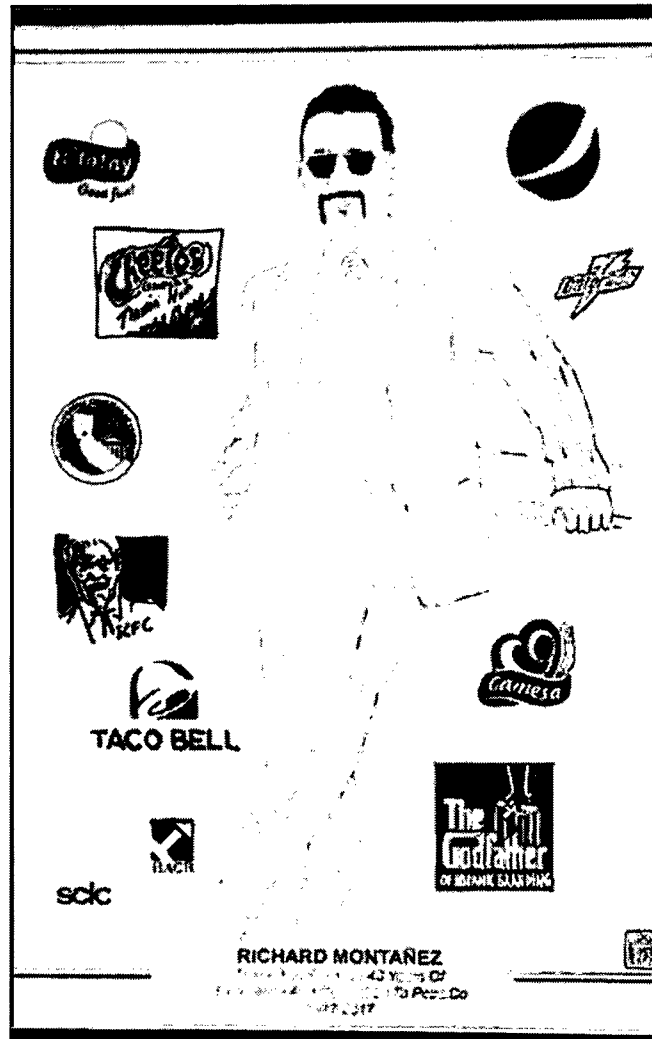
9       69. The demand for Mr. Montañez's speaking engagements continued to swell into the  
10 2010s. Starting in 2016, Mr. Montañez began receiving offers and opportunities for speaking  
11 engagements through the Capitol City Speakers Bureau and the Washington Speakers Bureau.  
12 These arrangements generated up to approximately 36 speaking engagements per year for Mr.  
13 Montañez, for which he was able to command prices from \$10,000 to \$50,000 per engagement.

14       70. Eventually, demand for Mr. Montañez's speaking engagements got to be so great  
15 that, in 2019, he retired from PepsiCo/Frito-Lay in order to more actively pursue a second career  
16 as a motivational speaker, along with consultancy projects, among other things.

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71. But the mark Mr. Montañez left on Frito-Lay/PepsiCo is indelible. Two years before he retired, in commemoration of his 40 years of service to the company, Indra Nooyi, Chairwoman and CEO of PepsiCo, provided Mr. Montañez with a poster commemorating his innumerable accomplishments—Flamin’ Hot Cheetos being chief among them—confirming Mr. Montañez had been dubbed “the Godfather of Hispanic Branding”:



VI. Mr. Montañez Publishes Two Memoirs and the *Flamin’ Hot* Movie Goes into Production.

72. The public was so interested in Mr. Montañez’s life story that, in 2013, Mr. Montañez published a memoir entitled *A Boy, a Burrito, and a Cookie: From Janitor to Executive*. It chronicled his rags-to-riches life story, explaining how the son of an immigrant laborer who

1 grew up poor and lacked a formal education still managed, through hard work and perseverance,  
2 to advance from a janitor to the inventor of one of Frito-Lay's most popular snacks, eventually  
3 becoming a senior marketing executive at major international company PepsiCo, and the resident  
4 expert on marketing to the Hispanic community.

5 73. Former PepsiCo CEO Steve Reinemund encouraged Mr. Montañez to write this  
6 first memoir, and PepsiCo even funded edits to the book. Upon the book's publication,  
7 Defendants' Government Affairs department purchased 1,000 copies of the book. After the book  
8 was published, Defendants made additional arrangements for Mr. Montañez to meet with  
9 numerous elected officials, including two trips to the White House (*see* photos below), to recount  
10 his story of inventing Flamin' Hot Cheetos.



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21 74. In June 2021, Mr. Montañez published his second memoir, *Flamin' Hot: The*  
22 *Incredible True Story of One Man's Rise from Janitor to Top Executive*. Defendants' praised the  
23 book, as evidenced on the book jacket—an excerpted quote featured on the book jacket from Ms.  
24 Nooyi is below:

25 “Richard’s story is a tour de force.”  
26 —Indra Nooyi, chairwoman and former CEO  
27 of PepsiCo  
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1           75. Studios were exceedingly interested in turning Mr. Montañez's life story into a full-  
2 length feature film. After months of bidding wars, eventually, Searchlight Pictures (a film  
3 production and distribution arm of Walt Disney Studios) signed on to distribute the film, with  
4 notorious producer DeVon Franklin set to produce. The film, to be entitled *Flamin' Hot*, was to be  
5 directed by the acclaimed Eva Longoria. The film was set to tell the inspiring story of Mr.  
6 Montañez's rise from humble beginnings to Frito-Lay janitor to creator of the global sensation  
7 Flamin' Hot line of Frito-Lay snacks by channeling his Mexican heritage. The film was  
8 eventually released on June 9, 2023 on the Disney+ and Hulu streaming platforms.

9           76. Everything seemed good in Mr. Montañez's life. But, before long, Defendants  
10 implemented a plan to discredit Mr. Montañez, disrupting his life and livelihood. Indeed, as Lupe  
11 DeLaCruz III, then-PepsiCo Senior Director of Government Affairs, had foreshadowed in a  
12 warning to Mr. Montañez in 2017, PepsiCo's legal team was fuming about the attention that Mr.  
13 Montañez was receiving, and they were "out to get him." Mr. DeLaCruz had also been instructed  
14 to no longer speak with Mr. Montañez. Mr. Montañez did not give these comments credence at  
15 the time, given other high-level executives employed by Defendants continued to support him, and  
16 Defendants had yet to give him any reason to believe Mr. DeLaCruz's accusations.

17 **VII. An LA Times Article Claims Mr. Montañez Did Not Invent Flamin' Hot Cheetos.**

18           77. On or about May 16, 2021 (just before Mr. Montañez's second memoir was  
19 released), Sam Dean, a business reporter for the Los Angeles Times ("LA Times") published an  
20 article purporting to discredit Mr. Montañez, claiming he did not, in fact, invent Flamin' Hot  
21 Cheetos. (Sam Dean, *The Man Who Didn't Invent Flamin' Hot Cheetos*, *supra*.) Despite carrying  
22 the salacious headline, "The Man Who Didn't Invent Flamin' Hot Cheetos," the story falls well  
23 short of substantiating such a bold claim against Mr. Montañez, as it misstates and omits key facts.

24           78. But the worst part? Defendants feeding the reporter false information to hurt Mr.  
25 Montañez.

26           79. The article cites interviews with more than a dozen former Frito-Lay employees—  
27 one of whom, Lynne Greenfeld (who now goes by Lynne Lemmel), reached out to Frito-Lay in  
28 2018 to allege that Mr. Montañez was falsely claiming to have invented Flamin' Hot Cheetos.

1 The article also cites information gathered by Frito-Lay as part of an internal investigation into the  
2 creation of Flamin' Hot Cheetos prompted by Ms. Greenfeld's allegation. The materials from the  
3 2018 Frito-Lay internal investigation were provided to the LA Times, along with a statement by  
4 Frito-Lay, which was quoted throughout the article.

5 80. The defamatory and misleading article not only derailed the release and reception  
6 of Mr. Montañez's second memoir, but put production of the film based on the book in grave  
7 jeopardy.

8 81. During production of *Flamin' Hot*, an unidentified female counsel for  
9 PepsiCo/Frito-Lay contacted DeVon Franklin, the movie's producer, to obtain information from  
10 him about the film and Mr. Montañez so that she could relay that information to Lynne Greenfeld  
11 and executives at PepsiCo/Frito-Lay. Mr. Montañez is informed and believes and thereon alleges  
12 that this unidentified female counsel from PepsiCo/Frito-Lay is the person who provided Sam  
13 Dean with many of the negative statements about Mr. Montañez and his involvement in the  
14 creation of Flamin' Hot Cheetos that ultimately made their way into the LA Times article  
15 discrediting Mr. Montañez.

16 82. As made apparent throughout the article, these sources are problematic across the  
17 board. While they claim to debunk Mr. Montañez because he was not involved in a 1990 test  
18 market conducted by Frito-Lay's Midwest/Metroline division for spicy snacks in certain cities  
19 including Detroit, Chicago, and Houston, this does not contradict Mr. Montañez's account of  
20 events, as the article and its sources claim. Mr. Montañez has never claimed to have been a part of  
21 the 1990 Midwest test market, or to have even known what any other divisions of Frito-Lay were  
22 developing at that time. Mr. Montañez worked out of his home kitchen to develop a spicy  
23 seasoning for Cheetos that was inspired by Mexican street food. He worked through the Frito-Lay  
24 R&D group's resistance to successfully test his product in Southern California markets and  
25 ultimately bring to market Flamin' Hot Cheetos. Al Carey—who, around this time, became CEO  
26 of Frito-Lay's West division and personally knew of Mr. Montañez's development of Flamin' Hot  
27 Cheetos—has publicly confirmed that Mr. Montañez is the person who invented them. (*See, e.g.,*  
28 Kristen Cloud, *PepsiCo's Carey Ignites The Front Line To Drive Results*,

1 THE SHELBY REPORT.COM (May 3, 2013), [https://www.theshelbyreport.com/2013/05/03/pepsicos-](https://www.theshelbyreport.com/2013/05/03/pepsicos-carey-ignites-the-front-line-to-drive-results/)  
2 [carey-ignites-the-front-line-to-drive-results/](https://www.theshelbyreport.com/2013/05/03/pepsicos-carey-ignites-the-front-line-to-drive-results/) (“‘Long story short,’ Carey said, ‘Richard is the one  
3 that invented the Cheetos Flamin’ Hot product.’”). Interestingly, the article makes no mention of  
4 Mr. Montañez’s separate Southern California test market of his spicy Cheetos snack.

5 83. The LA Times article also exhibits the same negative bias toward Mr. Montañez  
6 that he faced from Frito-Lay’s R&D department. The article states that a “team of hotshot snack  
7 food professionals,” including a “freshly minted MBA,” came up with the Flamin’ Hot Cheetos  
8 product and name, and unfairly implies that an uneducated plant worker of Mexican descent such  
9 as Mr. Montañez could not have created such a successful snack. This echoes the sentiments of  
10 Frito-Lay R&D scientists, one of whom intimated to Mr. Montañez that he needed a Ph.D. to  
11 develop new snacks and flavors at Frito-Lay.

12 84. The sources for the LA Times article had an ulterior motive for participating in the  
13 article—Ms. Greenfeld and other former Frito-Lay employees want to take the credit for Flamin’  
14 Hot Cheetos for themselves. The article quotes Fred Lindsay, a retired Frito-Lay salesman from  
15 the South Side of Chicago, as having said, “I’m the one that was responsible for getting us into  
16 Flamin’ Hot products.” The article also quotes Ms. Greenfeld as saying, “I came up with the  
17 Flamin’ Hot name on my own.” For years, PepsiCo and Frito-Lay credited Mr. Montañez with the  
18 invention of Flamin’ Hot Cheetos, using his story to inspire new employees or to gain goodwill  
19 through public speaking events. So, in order to take credit for Flamin’ Hot Cheetos for  
20 themselves, they would certainly first need to discredit Mr. Montañez.

21 85. At the same time, the article disregards unequivocal statements by Mr. Carey that  
22 Mr. Montañez, in no uncertain terms, is the creator of Flamin’ Hot Cheetos. Mr. Carey was there  
23 with Mr. Montañez when he prepared his spicy Cheetos and conducted test markets in Southern  
24 California over a period of three months. Of all people, he would know the truth regarding Mr.  
25 Montañez’s efforts to develop this spicy Cheetos snack. Yet the LA Times article inexplicably  
26 concludes that Mr. Montañez definitively did not invent Flamin’ Hot Cheetos. And in a world  
27 where salacious headlines and clickbait journalism reign supreme, this unsupported conclusion is  
28 enough to destroy a man’s reputation, legacy and livelihood.

1 86. After the LA Times article was published, Mr. Montañez received a Direct  
2 Message on Instagram from a woman named Rachel. In the message, Rachel offered her opinion  
3 on why Dean might have written the article in the way that he did:

4 Hi Richard! I hope you're well. Long time (lifelong really) Hot Cheetos fan. I  
5 listened to your Planet Money episode, and it was like listening to my dad speak.  
6 You feel so familiar to me! I'm sorry the LA Times article was written so poorly.  
7 That writer is my ex-boyfriend and I genuinely think he wrote it because he's bitter  
8 and wanted to get back at me. I'm sorry that he's taking it out publicly and oddly!  
9 You're the man!

10 87. One of the most egregious statements in the article was a quote attributed to Frito-  
11 Lay that called Mr. Montañez's contributions to the Flamin' Hot brand an "urban legend." This  
12 misleads the public into believing that Mr. Montañez is a fraudster who is spinning a tale created  
13 out of whole cloth. After championing Mr. Montañez for decades as the creator of Flamin' Hot  
14 Cheetos and an inspirational figure to be looked up to both within the Frito-Lay/PepsiCo  
15 organization and without, Frito-Lay suddenly cut Mr. Montañez down. Mr. Montañez suddenly  
16 found himself under attack from the very organization and people to whom he had devoted more  
17 than 40 years of his life.  
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1 88. Mr. Montañez's supporters aimed to clear the air by reiterating that he did, in fact,  
2 invent Flamin' Hot Cheetos. For instance, Mr. Enrico's longtime secretary Patti Rueff  
3 disseminated the following email to Mr. Montañez's detractors:

4 Please let me introduce myself. My name is Patti Rueff and I was Roger Enrico's executive assistant for over 20 years. Since everyone is so  
5 interested in debunking Richard Montanez's history with Frito-Lay, I'd like to set the record straight as I did with the LA Times Reporter who totally  
6 had his own agenda and totally disregarded all that we talked about for his article.

7 Have any of you seen the movie? If so, you'd see that Richard called Roger after much angst to pitch his idea for a new product for Cheetos that  
8 would appeal to the Hispanic community. **I AM THE PERSON WHO TOOK HIS CALL.** I listened to his pitch, which was confident (yet respectful), full  
9 of passion (yet humble) and thoroughly thought out. Something about him struck a chord in me and **I AM THE ONE WHO PUT THE CALL THROUGH**  
10 **TO ROGER.** This is 100% fact – not fiction. As you may know, Roger was a marketing genius, and he knew a good idea when he heard one. He in  
11 fact did ask me to set up a meeting with Richard the next time he did a plant tour in CA. And the rest is history.

12 When the LA Times reporter was doing his due diligence, he called the Frito-Lay headquarters in Plano who: #1, did not have any idea who created  
13 Flamin' Hot Cheetos and #2, told him there was NO RECORD of me ever working at Frito-Lay. Hmmm ... I guess working there for many years,  
14 meeting my husband and getting married in Dallas is not true. A little further digging would have told him my last name was not Rueff at the  
15 time. When the reporter kept saying that a woman in the Midwest had claimed that she and her team created the brand, no one could corroborate  
16 her story. There was obviously no one left at Frito-Lay to know the story. At that point, PepsiCo recanted their denial of Richard and issued a new  
17 statement that there was no reason to not believe Richard's account.

18 Richard and I stayed close for many years – and we still are. He was promoted at Frito-Lay over and over again, and no janitor would have been made  
19 Director of Hispanic Relations for doing nothing. PepsiCo flew him all over the United States on the corporate jet to speak and tell his inspirational  
20 message. This is not someone who just mopped floors.

21 I'm an Italian so I'm probably coming off as a little strong ... but I'm passionate about this because the haters need to stop hating and instead  
22 celebrate a feel good, follow your passion story like Richard's.

23 Hope I've been able to change your mind. I feel like it's my obligation to Richard ... and to Roger.

24 Patti

25 89. Nonetheless, the negative press did not let up. The LA Times article was so  
26 problematic that, just five days later, on May 21, 2021, Frito-Lay issued a statement clarifying that  
27 Mr. Montañez's contributions were "far from being an urban legend" and that the information  
28 Frito-Lay shared with the L.A. Times was "misconstrued" and "resulted in confusion." (Gene  
Maddaus, *PepsiCo Defends Richard Montañez, Claims Earlier Statements Were 'Misconstrued'*,  
VARIETY.COM (May 21, 2021), [https://variety.com/2021/film/news/pepsico-defends-richard-  
montanez-claims-earlier-statements-were-misconstrued-1234979160/](https://variety.com/2021/film/news/pepsico-defends-richard-montanez-claims-earlier-statements-were-misconstrued-1234979160/).)



1           90. This half-hearted clarification was simply too little, too late. While Defendants  
2 stated that they “ha[d] no reason to doubt the stories [Mr. Montañez] shares about taking the  
3 initiative to create new product ideas for the Cheetos brand, and pitching them to past PepsiCo  
4 leaders,” this far from endorses his version of events, which makes clear he invented Flamin’ Hot  
5 Cheetos. *Id.*

6           91. Around the same time, Frito-Lay provided additional information to Sarah Aida  
7 Gonzalez of National Public Radio’s “Planet Money” podcast, which had previously aired an  
8 episode featuring Mr. Montañez. On May 17, 2021, Gonzalez posted a series of 14 tweets on the  
9 social media platform Twitter (now called X) explaining what Frito-Lay had clarified to her based  
10 on the results of their investigation into the origin of Flamin’ Hot Cheetos:

- 11           • Frito-Lay refused to say that Mr. Montañez was not involved in the creation of  
12 Flamin’ Hot Cheetos, instead admitting that “He was part of it”;
- 13           • Former employees recall a small California-based marketing team developing a Mr.  
14 Montañez product, the product doing very well in a test market in Southern  
15 California;
- 16           • Former Frito-Lay R&D members recall samples being submitted from the  
17 Cucamonga plant to Frito-Lay R&D headquarters and that these samples may have  
18 possibly been Flamin’ Hot seasoning;
- 19           • Two former Frito-Lay employees remembered the product samples involving  
20 Cheetos;
- 21           • Al Carey and Jim Rich attended a meeting at the Cucamonga plant during which  
22 Mr. Montañez and two other employees pitched a number of products, including  
23 spicy Cheetos;
- 24           • Frito-Lay acknowledged the possibility that the 1989-1990 product test of Hot  
25 Cheetos in the Midwest markets could have been happening at the same time as test  
26 markets of the Cucamonga product in Southern California markets; and
- 27           • At the time of the Cucamonga plant meeting, Frito-Lay North America was divided  
28 into independently operating divisions with separate executive teams, and the West

1 Division may not have been aware of Metroline (Midwest) products or tests.  
2 Sarah Aida Gonzalez (@GonzalezSarahA), TWITTER.COM (May 17, 2021, 1:25 PM),  
3 <https://twitter.com/GonzalezSarahA/status/1394388743042174978>.

4 92. Again, none of these statements expressly endorse Mr. Montañez's version of  
5 events, and served only to fuel the fire. Media publications ran with this sudden discord, including  
6 the LA Times, which continued to exhibit its bias against Mr. Montañez. For instance, the  
7 *Flamin' Hot* film's success was severely impacted by Defendants' false accusations. Gustavo  
8 Arellano's column reviewing the film begins by accepting as gospel truth that Mr. Montañez "was  
9 a fibber at best and a fabulist at worst," based on Defendants' earlier statements to the publication.  
10 See, e.g., Gustavo Arellano, *Column: Why the Flamin' Hot Cheetos Movie Is Both Pandering and*  
11 *Pernicious*, LATIMES.COM (June 13, 2023), [https://www.latimes.com/california/story/2023-06-](https://www.latimes.com/california/story/2023-06-13/flamin-hot-movie-cheetos-eva-longoria)  
12 [13/flamin-hot-movie-cheetos-eva-longoria](https://www.latimes.com/california/story/2023-06-13/flamin-hot-movie-cheetos-eva-longoria).) This column disparages *Flamin' Hot*, failing to  
13 impartially consider the film, or the evidence making clear that Mr. Montañez told the truth about  
14 his creation of *Flamin' Hot Cheetos* (such as statements by Al Carey, former colleagues of Mr.  
15 Montañez, and even Frito-Lay themselves).

16 93. And instead of celebrating Mr. Montañez as a "genius" bold enough to pitch  
17 *Flamin' Hot Cheetos* to his Frito-Lay bigwigs like he did for a KQED article just four years prior,  
18 (Bianca Taylor, *Flamin' Hot Cheetos: The Humble Beginnings of a Junk Food*, KQED.ORG (Mar.  
19 15, 2019), [https://www.kqed.org/news/11732648/flamin-hot-cheetos-the-humble-beginnings-of-a-](https://www.kqed.org/news/11732648/flamin-hot-cheetos-the-humble-beginnings-of-a-junk-food)  
20 [junk-food](https://www.kqed.org/news/11732648/flamin-hot-cheetos-the-humble-beginnings-of-a-junk-food)), Arellano, in his LA Times column, does a complete 180° and incorrectly laments that  
21 the film's portrayal of Mr. Montañez as the creator of *Flamin' Hot Cheetos* relegates actual history  
22 to a mere afterthought.

23 94. The tides have turned on Mr. Montañez. While prior Google searches would return  
24 a myriad of hits on his inspirational story accrediting him with the creation of *Flamin' Hot*  
25 *Cheetos*, now, the first things that come up are articles questioning the veracity of his story.

26 **VIII. Public Statements Verify Mr. Montañez's Story**

27 95. Prior to and since the controversy over the creation of *Flamin' Hot Cheetos* has  
28 arisen, a number of Mr. Montañez's former colleagues have come forward to verify his story that

1 he created Flamin' Hot Cheetos. They have provided their accounts in, for example, public  
2 interviews, social media posts, or emails, and include the following:

- 3 a. A May 3, 2013 online article in The Shelby Report quoting Al Carey:  
4 “‘Long story short,’ Carey said, ‘Richard is the one that invented the  
5 Cheetos Flamin’ Hot product.’” Kristen Cloud, *PepsiCo’s Carey Ignites*  
6 *The Front Line To Drive Results*, THESHELBYREPORT.COM (May 3, 2013),  
7 [https://www.theshelbyreport.com/2013/05/03/pepsicos-carey-ignites-the-](https://www.theshelbyreport.com/2013/05/03/pepsicos-carey-ignites-the-front-line-to-drive-results/)  
8 [front-line-to-drive-results/](https://www.theshelbyreport.com/2013/05/03/pepsicos-carey-ignites-the-front-line-to-drive-results/).  
9 b. The May 16, 2021 LA Times article by Sam Dean, which quotes Al Carey  
10 as saying: “The product that we know today as Flamin’ Hot Cheetos was  
11 definitely not out in the market . . . That product was developed by those  
12 guys in the plant . . . Without Richard, this thing would not be out there.”  
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1 c. A May 16, 2021 email from Al Carey to David C. Lizárraga, Founder and  
2 Chairman of TELACU Education Foundation (an organization that aims to  
3 improve educational outcomes for first-generation students from under-  
4 resourced minority communities) stating: "I told the LAT reporter that I  
5 have been the most senior executive of Frito Lay and was there at the  
6 inception of flamin hot with Richard."

7 From: Carey, Al <[REDACTED]>  
8 Date: Sun, May 16, 2021 at 9:45 AM  
9 Subject: Re: Los Angeles Times: The man who  
10 didn't invent Flamin' Hot Cheetos  
11 To: Dr. David C. Lizárraga <[REDACTED]>  
12 CC: Richard Montañez <[REDACTED]>

13 This guy called me to get some information and  
14 after a while I realized that he was digging to find  
15 out information to discredit Richard.  
16 He called me back last night asking me to connect  
17 him to Richard.  
18 I told him absolutely not and the nugget of  
19 information he had about a 1990test market was  
20 explained if he dug further.  
21 I don't know who he called at FL ....he wouldn't tell  
22 me.  
23 But there is a woman who used to work at FL  
24 marketing, decades ago and started this  
25 story.....but we knew it's not accurate.  
26 I have an interview with one of the TV stations that  
27 seems to be supportive of Richard's story ....  
28 I'll check before I do it....to make sure that it's a  
positive intention.  
I told the LAT reporter that I have been the most  
senior executive of Frito Lay and was there at the  
inception of flamin hot with Richard. Today it's  
\$800mm per year in sales.  
You know, some people hate to see succeed.  
This quote is true....." success has many parents  
but failure is an orphan".

29 d. A social media post by Luis Nunez commenting: "I was there helping  
30 Richard Montanez testing the new product and the machines. I was a  
31 maintenance technician at the plant, when we first tested the application. I  
32 went home with flaming hot sauce up to my knees, my socks were red. It  
33 was a good test for the equipment and application, those were just the  
34 beginning, I got your back Richard."

1 e. A social media post on Instagram by username "brittfromplaya"  
2 commenting: "I interviewed with Pepsi Co (2016) and they shared this  
3 story – a man from janitor to creating the flaming hots chips, it was a  
4 motivational story to share. The movie may glamorize certain parts, it's a  
5 movie, but nonetheless true from what PepsiCo told me!"



brittfromplaya 6h



7 I interviewed with Pepsi Co (2016) and  
8 they shared this story – a man from  
9 janitor to creating the flaming hots  
10 chips, it was a motivational story to  
11 share. The movie may glamorize certain  
12 parts, it's a movie, but nonetheless true  
13 from what PepsiCo told me!

14 3 likes Reply

15 f. A social media post on Instagram by username "slick1950" commenting: "I  
16 remember working with you and your son so I laugh when people think  
17 they know what they talking about even when I did my orientation they told  
18 us your story."



20 slick1950 commented: I remember working  
21 with you and your son so I laugh when  
22 people think they know what they talking  
23 about even when I did my orientation they  
24 told us your story 1h



1 g. A social media post on Facebook by Manoj Narender Madnani  
2 commenting: "Richard P {FLNA} Montanez you are an inspiration. I met  
3 the late Roger Enrico whilst I was in Babson College and he mentioned  
4 your initiative when he addressed us and how successful it was for PepsiCo.  
5 To anyone in a leadership position; you never know where your next great  
6 idea will come from; therefore be inclusive and not exclusive when you rise  
7 up the ranks!"



9 **Manoj Narender Madnani** · 1st 1w (edited) ...  
10 Founder & CEO with a personal philosophy based...

11 Richard P {FLNA} Montanez you are an  
12 inspiration. I met the late Roger Enrico whilst I  
13 was in Babson College and he mentioned your  
14 initiative when he addressed us and how  
15 successful it was for PepsiCo.  
16 To anyone in a leadership position; you never  
17 know where your next great idea will come from;  
18 therefore be inclusive and not exclusive when you  
19 rise up the ranks!

20 Like · 5 Reply

1 h. A social media post on Facebook by Leah Box commenting: "I have my  
2 own insights as to Richard's story!!! In fact, he and I had many face to face  
3 conversations during his personal R&D crusade to meet the needs of the  
4 Hispanic market in LA!!! . . . While in [the Senior VP of R&D's] office,  
5 Richard took Snack Manufacturing magazines to get ideas on how to mass  
6 produce and distribute snack products with hot/spicey seasonings. My  
7 guess is there are 100's of us who could corroborate Richard's story!!!"



Leah Box

I have my own insights as to Richard's story!!! In fact, he and I had many face to face conversations during his personal R&D crusade to meet the needs of the Hispanic market in LA!!!

I have anecdotes that I could share that would add great validity AND interest to his story!!!

For example, the Senior VP of R&D was NOT interested in hearing the ideas of an hourly waged employee!!! (Let's be real - arrogance did occur in FL.) Richard met with him in person in Plano to pitch his idea at least one time, that I am aware of. While in his office, Richard took Snack Manufacturing magazines to get ideas on how to mass produce and distribute snack products with hot/spicey seasonings.

My guess is there are 100's of us who could corroborate Richard's story!!!

4h Like Reply



- i. A social media post on Facebook by Mike Fuller commenting: “I know Richard Montanez from the time I spent at the Cucamonga Plant and was at the plant when he presented his Hispanic flavor ideas to Roger Enrico and several other upper level FL managers. Richard went from working in Cucamonga processing/packaging operations to the Headquarters Marketing Team to support Multicultural Sales. Roger Enrico is dead and there are very few people left in Frito Lay now that go back to the late 1980’s to mid 1990’s timeframe that can provide an actual accounting how things went down. The media has picked this story up and is running it with a very slanted view in my opinion.”



Mike Fuller

Admin

I know Richard Montanez from the time I spent at the Cucamonga Plant and was at the plant when he presented his Hispanic flavor ideas to Roger Enrico and several other upper level FL managers. Richard went from working in Cucamonga processing/packaging operations to the Headquarters Marketing Team to support Multicultural Sales. Roger Enrico is dead and there are very few people left in Frito Lay now that go back to the late 1980's to mid 1990's timeframe that can provide an actual accounting how things went down. The media has picked this story up and is running it with a very slanted view in my opinion.

10h Like Reply

6

## **IX. Fallout from Defendants’ False Statements**

96. Despite this showing of public support from those who know and believe in Mr. Montañez, the fallout has been enormous. The internet is rampant with comments from individuals expressing distrust and feelings of betrayal after buying into Mr. Montañez’s story. Recent comments on one Reddit thread dated a year ago demonstrate as much:





DryTradition6576 • 1mo ago

People should call him out on it more. Dude is conman.

↑ 1 ↓ Reply Share ...



Ninjurk • 3mo ago

Yeah, and he didn't start yammering about his supposed role decades after they were invented. He's a marketer. Trying to market himself and his story, and it'd be a good story if it was true.

↑ 1 ↓ Reply Share ...



[deleted] • 3mo ago

There literally no pictures or documentation of anything this guy said he did, your telling me you wouldn't of took some pictures of you making this spicy Cheetos dust with your family or documented it anyway? That's the shit that really makes you know it's a straight up lie....

↑ 1 ↓ Reply Share ...



new\_boom\_action • 5mo ago

He didn't invent them! What is the controversy here? He might have independently come up with the idea of spicy Cheetos (how original...people put hot sauce on everything), but it is NOT the same recipe. Spicy [insert literally anything], wow. He had literally decades to figure out that this product was not the thing that he created. Did he even taste one? But he took credit for it anyway, wrote books, and went on speaking tours. His story was already very interesting...janitor ascends the corporate ladder to become an executive. Inspiring on its own. Why make up some BS about inventing one of the company's most popular products when he DID NOT.

↑ 1 ↓ Reply Share ...



thumper300zx2 • 8mo ago • Edited 8mo ago

So Richard Montañez is just another wealthy exec that takes credit for other peoples' accomplishments. Sounds about right, and of course, horribly ironic given the theme of the movie.

Also, seeing what Flamin' Hot Cheetos look and taste like, while I watched the movie I think, yeah, we're all eating the test tube version.

↑ 1 ↓ Reply Share ...

*TIL the legendary story about a janitor who came up with Flamin' Hot Cheetos was a lie.,*

REDDIT.COM,

[https://www.reddit.com/r/todayilearned/comments/11ec0ap/til\\_the\\_legendary\\_story\\_about\\_a\\_janit](https://www.reddit.com/r/todayilearned/comments/11ec0ap/til_the_legendary_story_about_a_janit)

1 or\_who\_came/?sort=new (last accessed April 26, 2024).

2 97. This public outcry has directly affected Mr. Montañez. Since 2019, his income has  
3 derived primarily from speaking and consultancy engagements. Clients book these engagements  
4 with Mr. Montañez because of his inspirational story involving his creation of Flamin' Hot  
5 Cheetos and other snacks marketed to the Hispanic community. As a direct result of Defendants'  
6 false statements denying the veracity of Mr. Montañez's story (which Defendants were previously  
7 happy to tout for over a decade to benefit PepsiCo and Frito-Lay), Mr. Montañez's ability to  
8 secure these lucrative engagements at the rate and fees he previously demanded has been severely  
9 and negatively impacted.

10 98. Prior to Defendants' false statements discrediting his creation of Flamin' Hot  
11 Cheetos, Mr. Montañez was booking dozens of lucrative engagements per year. For example, in  
12 2020, Mr. Montañez's clients for engagements included, without limitation, Deloitte (multiple  
13 engagements), Notre Dame University, Adobe, General Mills, Granger, Tennessee Tech  
14 University, Wisconsin Bankers Association, Tennessee Bankers Association, S&P, Leadercast,  
15 and ASI. Many of these bookings were obtained through Capitol City Speakers Bureau and the  
16 Washington Speakers Bureau, and Mr. Montañez was able to charge approximately \$10,000 to  
17 \$50,000 per engagement.

18 99. After the L.A. Times article was published on May 16, 2021, the number of Mr.  
19 Montañez's engagement opportunities shrank considerably. Yum Brand cancelled an engagement  
20 shortly after the article was published. Capitol City Speakers Bureau stopped pitching Mr.  
21 Montañez for engagements altogether. Washington Speakers Bureau, which used to generate  
22 about one engagement per month for Mr. Montañez, generated only two engagements during the  
23 entire year of 2022. Mr. Montañez had to sell his house as a result of his faltering income.

24 100. Even for engagements that do not fall through, Mr. Montañez and his team are  
25 having to expend significantly more effort into conducting damage control and assuaging the  
26 concerns of client organizations that arise as a result of Defendants' false statements about Mr.  
27 Montañez not creating Flamin' Hot Cheetos.

28 101. Defendants have made and continue to make false statements denying that Mr.

1 Montañez created Flamin' Hot Cheetos, despite numerous statements by Al Carey, Mr.  
2 Montañez's former colleagues, and even Frito-Lay itself that corroborate Mr. Montañez's account  
3 of events. As a result, Mr. Montañez went from booking over 35 engagements per year to  
4 booking approximately four in 2024. Moreover, while previous engagements were typically  
5 booked through speaker bureaus, now, most new bookings come directly through Mr. Montañez's  
6 website and his audience has become predominantly limited to Latino or Hispanic organizations  
7 and employee resource groups.

8 **X. Lightbox Documentary Falls Through Because of PepsiCo/Frito-Lay Statements.**

9 102. In addition to speaking and consultancy engagements, Defendants' lies have cost  
10 Mr. Montañez other major opportunities. While several prestigious production companies were  
11 interested in developing a documentary about Mr. Montañez's life, including Park Slope  
12 Productions and Morgan Freeman's Revelations Entertainment, those discussions have all fizzled  
13 due to Defendants' disparaging remarks.

14 103. For example, on or around May 5, 2023, Mr. Montañez was approached by Maddie  
15 Hausberg and Alexis Gomez-Garcia at Lightbox about the possibility of producing a documentary  
16 about his life. Lightbox is a media production company based in Los Angeles and London that  
17 specializes in high-end documentaries. It was founded by Simon Chinn (a two-time Academy  
18 Award-winning producer – *Man on Wire* and *Searching for Sugar Man*) and Jonathan Chinn (an  
19 Emmy Award-winning producer – *LA 92* and *American High*) and has produced popular and  
20 critically acclaimed films and series about entertainment figures with complex, emotional stories  
21 such as Tina Turner and Whitney Houston.

22 104. According to Hausberg, Lightbox's ambition was "to delve deep into [Mr.  
23 Montañez's] compelling and complex life journey – a Latino's fight up the corporate ladder –  
24 exhibiting perseverance, determination, and courage to become a remarkable example of the  
25 American Dream. We are aware that your successes did not come without sacrifice and scrutiny  
26 in the media, with judgments and misunderstandings – but we'd like to explore your triumphs and  
27 struggles through your own voice, finally setting the record straight."

28 105. Mr. Montañez was excited about the concept and vision that Lightbox presented for

1 the documentary, so Norma Manzanares at Pivot Media (who was part of Mr. Montañez's team)  
2 began engaging in further discussions with Lightbox. After ensuring Mr. Montañez's existing  
3 media/production deals posed no limitation on his ability to pursue this documentary project with  
4 Lightbox, on or about July 6, 2023, Manzanares requested that Lightbox prepare a formal  
5 agreement.

6 106. Lightbox responded that it wanted the documentary to present both sides of the  
7 controversy surrounding the creation of Flamin' Hot Cheetos, with the ultimate conclusion that  
8 Mr. Montañez did, in fact, create them. Accordingly, while Lightbox was putting together its  
9 formal proposal for the documentary project, it also reached out to the LA Times (including Sam  
10 Dean) and a "contributor" at PepsiCo/Frito-Lay to secure their participation in the documentary.

11 107. On or about September 21, 2023, Ms. Gomez-Garcia informed Ms. Manzanares  
12 that the contributors at the LA Times and PepsiCo/Frito-Lay wanted the documentary to reach a  
13 different conclusion—namely, that Mr. Montañez did not invent Flamin' Hot Cheetos.  
14 PepsiCo/Frito-Lay refused to participate in the documentary if the documentary did not further  
15 discredit Mr. Montañez as the creator of Flamin' Hot Cheetos. The statements that they made to  
16 Lightbox—including, on information and belief, false statements that Mr. Montañez did not create  
17 Flamin' Hot Cheetos—made it impossible for Lightbox to continue with the documentary project  
18 in accordance with its initial ambition and creative direction, so Lightbox pulled out of the project.

19 108. The false statements PepsiCo/Frito-Lay made to Lightbox resulted in the abrupt  
20 end to the documentary project, and harmed Mr. Montañez in multiple ways. First, it caused  
21 financial harm, as Mr. Montañez was deprived of a share of revenue from the creation and  
22 publishing of the film. Second, it caused reputational harm, given the false statements made to  
23 Lightbox and Ms. Gomez-Garcia claiming that Mr. Montañez was not the creator of Flamin' Hot  
24 Cheetos. Third, it caused reputational harm, by unfairly depriving Mr. Montañez of a platform to  
25 tell his story to viewers.

26 109. These false statements by PepsiCo/Frito-Lay continue the pattern of racially  
27 motivated retaliation against Mr. Montañez for having a nontraditional, nonlinear path to success.  
28 While Defendants were fine capitalizing on Mr. Montañez's rags-to-riches story for decades, their

1 recent relegation of his life story to an “urban legend,” and consistent attempts to undermine him  
2 and interfere with his business dealings, leave him no choice but to file suit.

3 **FIRST CAUSE OF ACTION**

4 **Violation of the Fair Employment and Housing Act (Cal. Gov’t Code § 12900 *et seq.*)**

5 **(Against PepsiCo and Frito-Lay)**

6 110. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and  
7 every preceding paragraph as if fully set forth herein.

8 111. The Fair Employment and Housing Act (“FEHA”) provides, in pertinent part: “It is  
9 an unlawful employment practice . . . [f]or an employer, because of the race, . . . color, . . . , [or]  
10 ancestry . . . of any person . . . to discriminate against the person in compensation or in terms,  
11 conditions, or privileges of employment.” Cal. Gov’t Code § 12940.

12 112. At all times mentioned herein, PepsiCo and Frito-Lay were employers within the  
13 meaning of FEHA because they each employed five or more persons.

14 113. Mr. Montañez was an employee of PepsiCo and/or Frito-Lay. Mr. Montañez was  
15 directly employed by Frito-Lay and/or PepsiCo for over 40 years, starting as a janitor in 1976 until  
16 2019 when he retired as Vice President of Multicultural Marketing & Sales at PepsiCo.

17 114. As a Mexican man, Mr. Montañez’s protected status under FEHA is his race, color,  
18 and ancestry.

19 115. As alleged herein, PepsiCo and Frito-Lay discriminated against Mr. Montañez  
20 because he is Mexican.

21 116. Defendants took deliberate actions to exclude Mr. Montañez from the R&D process  
22 of the product he invented in his own kitchen simply because he was Mexican. Mr. Montañez did  
23 not know, and could not have known, as much at the time, given his relative station in the  
24 company and the praise he received from others outside R&D. Defendants’ recent and  
25 unequivocal remarks this past year discrediting Mr. Montañez put him on notice that his treatment  
26 at PepsiCo/Frito-Lay was borne of racial discrimination. Indeed, the disparate treatment smacks  
27 of discriminatory animus—despite creating countless popular food snacks for Defendants over the  
28 years, including the multi-billion dollar Flamin’ Hot portfolio, it took them *twenty years* to

1 promote him off the line—far longer than his White counterparts.

2 117. PepsiCo, Frito-Lay, and their current and former employees have taken actions  
3 directly intended to discredit Mr. Montañez as the creator of the incredibly popular Flamin' Hot  
4 Cheetos snack that generates hundreds of millions of dollars annually for PepsiCo and Frito-Lay.  
5 For decades, PepsiCo and Frito-Lay championed Mr. Montañez as the inventor of Flamin' Hot  
6 Cheetos, telling the story of a janitor—the son of a Mexican immigrant—who went on to invent  
7 one of the company's most successful products that has been embraced by Hispanic consumers.  
8 PepsiCo and Frito-Lay told Mr. Montañez's inspirational story to new and prospective employees  
9 during orientations and interviews in order to generate goodwill and benefit from it by improving  
10 the morale of employees or increasing their probabilities of hiring applicants for positions within  
11 the company.

12 118. PepsiCo and Frito-Lay likewise capitalized on Mr. Montañez's story of creating  
13 Flamin' Hot Cheetos by engaging him to speak publicly and promote PepsiCo and Frito-Lay in  
14 order to generate enormous public goodwill and increase their sales and profits. They held Mr.  
15 Montañez out as an example of the American Dream—a humble, low level employee going on to  
16 become a senior executive and inventing wildly successful products along the way—to make  
17 PepsiCo and Frito-Lay more attractive as employers as well as manufacturers of snack foods and  
18 beverages. This was especially true among Hispanic consumers, for whom Flamin' Hot Cheetos  
19 took on even greater cultural significance, and PepsiCo and Frito-Lay cashed in by using Mr.  
20 Montañez, a Mexican man, to be the face of the brand. PepsiCo and Frito-Lay had Mr. Montañez  
21 attend promotional and speaking engagements as part of his employment duties, provided Mr.  
22 Montañez with means to travel to and from these events (or paid Mr. Montañez's travel costs), and  
23 reviewed and approved the speeches that Mr. Montañez gave at those events.

24 119. Despite decades of publicly accrediting Mr. Montañez with inventing Flamin' Hot  
25 Cheetos, PepsiCo and Frito-Lay now seek to tear him down, discredit him, and cast doubt on the  
26 veracity of his narrative. They made damaging statements to the media, including telling the LA  
27 Times that Mr. Montañez's invention of Flamin' Hot Cheetos was nothing more than an “urban  
28 legend.” While Defendants attempted to walk back this statement shortly thereafter, PepsiCo and

1 Frito-Lay also had an unidentified woman contact DeVon Frankin, the producer of the 2023 movie  
2 about Mr. Montañez, *Flamin' Hot*, to uncover additional information about Mr. Montañez and the  
3 film so that it could be relayed to PepsiCo, Frito-Lay, Lynne Greenfeld, and, upon information and  
4 belief, Sam Dean at the LA Times—all as part of a concerted effort to discredit Mr. Montañez.

5 120. PepsiCo and Frito-Lay further sabotaged Mr. Montañez's efforts to participate in a  
6 lucrative documentary film about his life, telling producers that they would not participate in the  
7 film unless it further disseminated their defamatory message—Mr. Montañez is a liar, who did not  
8 invent anything. This further evinces Defendants' discriminatory animus.

9 121. PepsiCo and Frito-Lay engaged in these activities in an attempt to discredit Mr.  
10 Montañez and wrest back the creation story of one of their most successful products, Flamin' Hot  
11 Cheetos, away from an uneducated Mexican man with humble roots in a migrant farming labor  
12 camp and in favor of more highly educated, MBA-wielding, and White "hotshot snack food  
13 professionals" like Lynne Greenfeld.

14 122. As a direct and proximate cause of PepsiCo and Frito-Lay's conduct, Mr.  
15 Montañez suffered damages, including economic losses, reputational harm, and emotional and  
16 mental distress.

17 123. PepsiCo, Frito-Lay, and their past and present employees' open racism and blatant  
18 lies and disregard for Mr. Montañez evince they were guilty of oppression, fraud, and malice in  
19 connection with their intentional misrepresentations, within the meaning of Civil Code Section  
20 3294, as their actions were intended to deprive Mr. Montañez of his property and legal rights. As  
21 such, Mr. Montañez requests an assessment of punitive damages against PepsiCo and Frito-Lay in  
22 an amount to be assessed at the time of trial.

23 124. Mr. Montañez will also seek and is entitled to recover attorneys' fees in connection  
24 with this cause of action under Government Code Section 12940, *et seq.*

25 125. Mr. Montañez timely filed charges against PepsiCo and Frito-Lay with the  
26 California Department of Fair Employment and Housing ("DFEH") and has received a Right-to-  
27 Sue letter from the DFEH regarding all applicable claims asserted in this action. Accordingly,  
28 Plaintiff has fully exhausted his administrative remedies as to such claims.



**SECOND CAUSE OF ACTION**

**Fraud—Misrepresentation and False Promise**

**(Against All Defendants)**

126. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and every preceding paragraph as if fully set forth herein.

127. Flamin' Hot Cheetos has become a cultural phenomenon, and particularly so among the Hispanic community in the United States. This was, in large part, due to the seasoning inspired by flavors in Mexican street food that Mr. Montañez developed for Flamin' Hot Cheetos and the Hispanic marketing campaign that led to PepsiCo and Frito-Lay to refer to him as “the Godfather of Hispanic Branding.” For decades, PepsiCo and Frito-Lay have not been shy about holding out Mr. Montañez, a Mexican man, as the creator of Flamin' Hot Cheetos in order to engender copious amounts of goodwill among its most passionate consumer base, the Hispanic community, and to ultimately sell more Flamin' Hot Cheetos to the tune of hundreds of millions of dollars annually. It certainly helped that Mr. Montañez's story also included the fulfillment of the American Dream—namely, the inspirational and meteoric rise of an uneducated Mexican man from humble roots who created a wildly successful product like Flamin' Hot Cheetos and went on to become a senior PepsiCo/Frito-Lay marketing executive.

128. In order to ensure Mr. Montañez's continuing cooperation (to their direct financial benefit), PepsiCo and Frito-Lay—acting through their executives and employees—promised to continue to support, and to continue to tell the true story of, Mr. Montañez's creation of Flamin' Hot Cheetos. This promise was conveyed to Mr. Montañez through the statements and actions of PepsiCo, Frito-Lay, and their employees, including presenting Mr. Montañez with a poster celebrating the 40th anniversary of his employment with PepsiCo/Frito-Lay that prominently features the Flamin' Hot Cheetos logo; sending Mr. Montañez to speaking engagements to tell his story about creating Flamin' Hot Cheetos; reviewing and approving Mr. Montañez's speeches that tell the story about creating Flamin' Hot Cheetos; featuring Mr. Montañez's story about creating Flamin' Hot Cheetos in PepsiCo/Frito-Lay new employee orientation materials; telling Mr. Montañez's story about creating Flamin' Hot Cheetos to candidates interviewing for positions at



1 PepsiCo/Frito-Lay; sending notes and letters from PepsiCo/Frito-Lay executives such as Roger  
2 Enrico (Chairman and CEO of PepsiCo), Steven Reinemund, Dwight Risky (VP Marketing  
3 Research & New Business of Frito-Lay), and Jim Rich (VP Field Support of Frito-Lay); and  
4 featuring Mr. Montañez in PepsiCo/Frito-Lay internal publications. Based on the senior executive  
5 status of the PepsiCo/Frito-Lay employees who promised to support, and did initially appear to  
6 support, his creation of Flamin' Hot Cheetos, Mr. Montañez reasonably relied upon their  
7 (mis)representations.

8 129. But, Defendants lied. Defendants did not continue to support Mr. Montañez's  
9 business dealings centered on his creation of Flamin' Hot Cheetos, as they had originally  
10 promised. Instead, they fed false and misleading statements and information to Sam Dean of the  
11 LA Times that Mr. Montañez did not invent Flamin' Hot Cheetos and that his story about creating  
12 them was an "urban legend," casting doubt about not only the truth of Mr. Montañez's story but  
13 also his integrity. Defendants repeated these false and misleading statements to Lightbox in an  
14 attempt to kill a documentary project about Mr. Montañez's creation of Flamin' Hot Cheetos and  
15 prevent his story from being told.

16 130. Defendants had no intention of continuing to support Mr. Montañez's story about  
17 his creation of Flamin' Hot Cheetos when they made that promise to Mr. Montañez. Defendants  
18 intended all along that they would use the story of Mr. Montañez's creation of Flamin' Hot  
19 Cheetos to drive sales and generate goodwill for PepsiCo/Frito-Lay—particularly among the  
20 Hispanic community—but discredit that same story whenever an alternative narrative might  
21 become convenient.

22 131. Defendants intended that Mr. Montañez rely on their misrepresentations and false  
23 promises up to and until they discredited Mr. Montañez's creation of Flamin' Hot Cheetos by  
24 providing false and misleading statements and information (i) to Dean of the LA Times for  
25 publication as part of Dean's May 16, 2021 article, and (ii) to Lightbox in order to silence Mr.  
26 Montañez from telling his story about creating Flamin' Hot Cheetos.

27 132. Mr. Montañez reasonably relied on Defendants' misrepresentations and false  
28 promises because senior executives of PepsiCo/Frito-Lay promised to support Mr. Montañez's

1 story of creating Flamin' Hot Cheetos and because PepsiCo/Frito-Lay appeared to be genuine in  
2 their promise by initially encouraging, and providing travel arrangements for, Mr. Montañez to  
3 publicly deliver speeches re-telling that story, which were reviewed and approved by PepsiCo and  
4 Frito-Lay. Mr. Montañez was not aware that PepsiCo and Frito-Lay had no intention of keeping  
5 their promise, and that they would later seek to discredit him. In reasonably relying on  
6 Defendants' misrepresentations and false promises, Mr. Montañez staked his personal reputation  
7 (by becoming widely recognized as the creator of Flamin' Hot Cheetos among the Hispanic  
8 community and consumers at large) and his career (by retiring from PepsiCo/Frito-Lay to pursue  
9 speaking and consulting engagements based, in significant part, on his recognition as the creator  
10 of Flamin' Hot Cheetos) on the promised continuing support of PepsiCo and Frito-Lay for Mr.  
11 Montañez as the creator of Flamin' Hot Cheetos.

12 133. Defendants' misrepresentations and false promises caused Mr. Montañez to suffer  
13 damages, including economic losses, reputational harm, and emotional and mental distress. Mr.  
14 Montañez's economic losses include lost income from reduced speaking and consulting  
15 engagement opportunities (which he obtained in large part because he was widely recognized as  
16 the inventor of the incredibly popular Flamin' Hot Cheetos) and lost income from canceled, or lost  
17 opportunities to engage in, film/media projects.

18 134. Defendants' open racism and blatant lies and disregard for Mr. Montañez evince  
19 they were guilty of oppression, fraud, and malice in connection with their intentional  
20 misrepresentations and false promises, within the meaning of Civil Code Section 3294, as their  
21 actions were intended to deprive Plaintiff of his property and legal rights. As such, Plaintiff  
22 requests an assessment of punitive damages against Defendants in an amount to be assessed at the  
23 time of trial.

### 24 **THIRD CAUSE OF ACTION**

#### 25 **Defamation at Common Law and Civil Code § 46**

#### 26 **(Against All Defendants)**

27 135. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and  
28 every preceding paragraph as if fully set forth herein.

1           136. Plaintiff is informed and believes and thereon alleges that, sometime between July  
2 and September of 2023, an unidentified PepsiCo and/or Frito-Lay employee spoke or  
3 corresponded with Alexis Gomez-Garcia or another employee at Lightbox and expressed, and  
4 caused PepsiCo and/or Frito-Lay to express, purportedly factual statements that Mr. Montañez did  
5 not invent Flamin' Hot Cheetos. This statement implied that Mr. Montañez lacked integrity and  
6 was taking credit for inventing a product that he knew he did not invent. Plaintiff is informed and  
7 believes and thereon alleges that this PepsiCo and/or Frito-Lay employee intentionally  
8 communicated these statements to Lightbox.

9           137. The statements made to Lightbox regarding Mr. Montañez's not being the inventor  
10 of Flamin' Hot Cheetos were false. Mr. Montañez had developed the Flamin' Hot Cheetos  
11 seasoning in his home kitchen, pitched the new snack to Frito-Lay executives, and then conducted  
12 the Southern California test markets that proved it to be a success. PepsiCo and Frito-Lay have  
13 credited Mr. Montañez with creating Flamin' Hot Cheetos for over twenty years, including it in  
14 their own internal and external marketing and messaging, as well as paying for Mr. Montañez to  
15 travel across the country to recount, among other things, the story of his invention of Flamin' Hot  
16 Cheetos. Accounts by former colleagues of Mr. Montañez, including Al Carey (the former CEO  
17 of Frito-Lay and Frito-Lay West division), confirm that Mr. Montañez was the one who created  
18 Flamin' Hot Cheetos.

19           138. Defendants made the above-described defamatory statements with actual malice,  
20 either with knowledge of their falsity or, alternatively, with a reckless disregard for their falsity.

21           139. Defendants made these statements without privilege or justification.

22           140. Defendants' statements concerning Mr. Montañez directly injured him by  
23 diminishing his reputation in his profession, trade, and/or business, which consists largely of  
24 speaking engagements and film/publishing deals based on the story of his life and achievements,  
25 including creating Flamin' Hot Cheetos. Indeed, the statements to Lightbox came in the midst of  
26 a deal for Lightbox to produce a documentary about Mr. Montañez's creation of Flamin' Hot  
27 Cheetos. Accordingly, defendants' statements have a natural tendency to lessen Mr. Montañez's  
28 profits.

1 141. Defendants' statements convey a defamatory meaning, harming and lowering Mr.  
2 Montañez's reputation.

3 142. It was Defendants' expectation and intent that the defamatory statements would  
4 injure Mr. Montañez economically, including by jeopardizing the documentary deal with Lightbox  
5 and otherwise lessening Mr. Montañez's profits.

6 143. As a result of the publication of these false and defamatory statements made by  
7 Defendants with actual malice, Mr. Montañez's documentary project with Lightbox was  
8 terminated. Mr. Montañez suffered damages including, but not limited to, lost compensation, lost  
9 profits, and loss to reputation.

10 144. Defendants' open racism and blatant lies and disregard for Mr. Montañez evince  
11 they were guilty of oppression, fraud, and malice in connection with their intentional  
12 misrepresentations and false promises, within the meaning of Civil Code Section 3294, as their  
13 actions were intended to deprive Plaintiff of his property and legal rights. As such, Plaintiff  
14 requests an assessment of punitive damages against Defendants in an amount to be assessed at the  
15 time of trial.

16 **FOURTH CAUSE OF ACTION**

17 **Intentional Interference with Prospective Economic Advantage**

18 **(Against All Defendants)**

19 145. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and  
20 every preceding paragraph as if fully set forth herein.

21 146. In May 2023, Lightbox reached out to Mr. Montañez expressing an interest in  
22 working with him on a documentary project centered around Mr. Montañez's invention of Flamin'  
23 Hot Cheetos. Both Mr. Montañez and Lightbox were in agreement that they wanted to proceed  
24 with developing this documentary project. Mr. Montañez's team checked their existing media  
25 contracts to ensure that there were no applicable limitations on such a documentary project. By  
26 around July 6, 2023, Ms. Norma Manzanares (a member of Mr. Montañez's team) asked Lightbox  
27 to put together a formal proposal for this documentary project, including financial compensation  
28 and production credit(s) for Mr. Montañez.

1           147. Between July 6 and September 21, 2023, Lightbox reached out to Defendants to see  
2 whether PepsiCo and Frito-Lay were interested in participating in the documentary. Plaintiff is  
3 informed and believes and thereon alleges that, as part of these discussions, Lightbox informed  
4 Defendants of Mr. Montañez's involvement in the documentary project, and that Defendants  
5 therefore had actual knowledge of Mr. Montañez's pre-existing economic relationship with  
6 Lightbox.

7           148. Lightbox further informed Defendants that the documentary would ultimately  
8 conclude that Mr. Montañez invented Flamin' Hot Cheetos. Plaintiff is informed and believes and  
9 thereon alleges that Defendants stated to Lightbox that Mr. Montañez did not invent Flamin' Hot  
10 Cheetos. The statements made to Lightbox regarding Mr. Montañez's not being the inventor of  
11 Flamin' Hot Cheetos were false. Mr. Montañez had developed the Flamin' Hot Cheetos seasoning  
12 in his home kitchen, pitched the new snack to Frito-Lay executives, and then conducted the  
13 Southern California test markets that proved it to be a success. PepsiCo and Frito-Lay have  
14 credited Mr. Montañez with creating Flamin' Hot Cheetos for over twenty years, including it in  
15 their own internal and external marketing and messaging, as well as paying for Mr. Montañez to  
16 travel across the country to recount, among other things, the story of his invention of Flamin' Hot  
17 Cheetos. Accounts by former colleagues of Mr. Montañez, including Al Carey (the former CEO  
18 of Frito-Lay and Frito-Lay West division), confirm that Mr. Montañez was the one who created  
19 Flamin' Hot Cheetos.

20           149. In addition, Defendants conditioned their participation in the documentary on  
21 Lightbox's acquiescence into portraying Defendants' false narrative regarding Mr. Montañez's  
22 status as the creator in Flamin' Hot Cheetos.

23           150. Defendants intentionally made these false statements about Mr. Montañez to  
24 Lightbox. Plaintiff is informed and believes and thereon alleges that Defendants' false statement  
25 was designed to disrupt the existing economic relationship between Mr. Montañez and Lightbox  
26 by putting the documentary project in jeopardy.

27           151. Shortly thereafter, Lightbox canceled the documentary project. Defendants  
28 succeeded in their scheme to disrupt the existing economic relationship between Mr. Montañez

1 and Lightbox.

2 152. Defendants' intentional false statements to Lightbox caused Mr. Montañez to suffer  
3 damages, including economic losses, reputational harm, and emotional and mental distress.

4 153. Defendants' open racism and blatant lies and disregard for Mr. Montañez evince  
5 they were guilty of oppression, fraud, and malice in connection with their intentional  
6 misrepresentations and false promises, within the meaning of Civil Code Section 3294, as their  
7 actions were intended to deprive Plaintiff of his property and legal rights. As such, Plaintiff  
8 requests an assessment of punitive damages against Defendants in an amount to be assessed at the  
9 time of trial.

10 **FIFTH CAUSE OF ACTION**

11 **Unjust Enrichment**

12 **(Against All Defendants)**

13 154. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and  
14 every preceding paragraph as if fully set forth herein.

15 155. PepsiCo and Frito-Lay obtained enormous benefits from advertising Mr.  
16 Montañez's story regarding his creation of Flamin' Hot Cheetos. Flamin' Hot Cheetos has  
17 become a cultural phenomenon, and particularly so among the Hispanic community in the United  
18 States. This was, in large part, due to the seasoning inspired by flavors in Mexican street food that  
19 Mr. Montañez developed for Flamin' Hot Cheetos and the Hispanic marketing campaign that led  
20 to PepsiCo and Frito-Lay to refer to him as "the Godfather of Hispanic Branding." For decades,  
21 PepsiCo and Frito-Lay have not been shy about holding out Mr. Montañez, a Mexican man, as the  
22 creator of Flamin' Hot Cheetos in order to engender copious amounts of goodwill among its most  
23 passionate consumer base, the Hispanic community, and to ultimately sell more Flamin' Hot  
24 Cheetos to the tune of hundreds of millions of dollars annually. It certainly helped that Mr.  
25 Montañez's story also included the fulfillment of the American Dream—namely, the inspirational  
26 and meteoric rise of an uneducated Mexican man from humble roots who created a wildly  
27 successful product like Flamin' Hot Cheetos and went on to become a senior PepsiCo/Frito-Lay  
28 marketing executive.

1 156. For many years, PepsiCo and Frito-Lay credited Mr. Montañez with the creation of  
2 Flamin' Hot Cheetos, including having Mr. Montañez conduct many speaking engagements over  
3 the years to tell his story, paying for his travel expenses, reviewing and approving his speeches  
4 about his creation of Flamin' Hot Cheetos, telling his story to candidates during job interviews,  
5 including his story as part of new-hire orientation materials, and recognizing him as the creator of  
6 Flamin' Hot Cheetos both inside and outside their organizations.

7 157. However, Defendants abruptly changed course and began publicly discrediting Mr.  
8 Montañez's creation of Flamin' Hot Cheetos. They fed false and misleading statements and  
9 information to Sam Dean of the LA Times that Mr. Montañez did not invent Flamin' Hot Cheetos  
10 and that his story about creating them was an "urban legend," falsely casting doubt about not only  
11 the truth of Mr. Montañez's story but also his integrity. Defendants repeated these false and  
12 misleading statements to Lightbox in an attempt to kill a documentary project about Mr.  
13 Montañez's creation of Flamin' Hot Cheetos and prevent his story from being told.

14 158. Defendants' false and misleading statements caused Mr. Montañez to suffer  
15 damages, including economic losses, reputational harm, and emotional and mental distress. Mr.  
16 Montañez's economic losses include lost income from reduced speaking and consulting  
17 engagement opportunities (which he obtained in large part because he was widely recognized as  
18 the inventor of the incredibly popular Flamin' Hot Cheetos) and lost income from canceled, or lost  
19 opportunities to engage in, film/media projects.

20 159. Under these circumstances, PepsiCo and Frito-Lay's retention of the benefits from  
21 Mr. Montañez's story at his expense is unjust. PepsiCo and Frito-Lay should not be allowed to  
22 build Mr. Montañez up for decades as the creator of Flamin' Hot Cheetos, only to then tear him  
23 down, all the while reaping the profits at Mr. Montañez's expense.

24 **SIXTH CAUSE OF ACTION**

25 **Violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*)**

26 **(Against All Defendants)**

27 160. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and  
28 every preceding paragraph as if fully set forth herein.



1 161. California's Unfair Competition Law, codified at Business and Professions Code  
2 Section 17200 *et seq.*, prohibits "any unlawful, unfair or fraudulent business act or practice." Cal.  
3 Bus. & Prof. Code § 17200. Defendants have violated this statute under all three prongs.

4 162. First, Defendants have engaged in unlawful business practices by discriminating  
5 against Mr. Montañez in violation of FEHA, defaming Mr. Montañez as being untruthful and  
6 lacking integrity regarding his creation of Flamin' Hot Cheetos, defrauding Mr. Montañez by  
7 making misrepresentations and false promises about recognizing him as the inventor of Flamin'  
8 Hot Cheetos, interfering with a documentary project that Mr. Montañez and Lightbox were  
9 actively pursuing, and unjustly enriching itself by advertising Mr. Montañez's story only to  
10 discredit it later at Mr. Montañez's expense.

11 163. Second, Defendants have engaged in unfair business practices by first propping up  
12 Mr. Montañez as the creator of Flamin' Hot Cheetos for decades and then abruptly discrediting  
13 him later. Defendants deceived the public as to their recognition of Mr. Montañez—a Mexican  
14 man from humble origins who advanced to the senior executive level at PepsiCo—as the inventor  
15 of Flamin' Hot Cheetos. Their longtime support for Mr. Montañez's story helped build up a  
16 fervent consumer base, especially among Hispanic consumers, who were deceived into believing  
17 that PepsiCo and Frito-Lay stood by Mr. Montañez and afforded Defendants additional goodwill  
18 as a result. Defendants' sudden discreditation of Mr. Montañez after years of supporting his story  
19 has harmed consumers and Mr. Montañez.

20 164. Defendants also engaged in unfair business practices by using Mr. Montañez's  
21 story to unfairly attract and retain new employees. PepsiCo and Frito-Lay told Mr. Montañez's  
22 story to job candidates and to new hires despite having no intention of maintaining their support  
23 for Mr. Montañez, all to unfairly improve their prospects of hiring and retaining employees.

24 165. Third, Defendants have engaged in fraudulent business practices by utilizing Mr.  
25 Montañez's story about the creation of Flamin' Hot Cheetos to derive additional public goodwill,  
26 as well as sales and profits, when they had no intention of maintaining support for Mr. Montañez,  
27 thereby deceiving consumers.

28 166. Defendants' unlawful, unfair, and fraudulent business practices caused Plaintiff



1 harm and injury. Defendants were unjustly enriched at Plaintiff's expense. Plaintiff is entitled to  
2 restitution of any profits Defendants incurred as a result of the use of Mr. Montañez's story.

3 167. Plaintiff also seeks an injunction prohibiting PepsiCo, Frito-Lay, and their  
4 employees from making false and misleading statements that Mr. Montañez is not the creator of  
5 Flamin' Hot Cheetos.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

8 1. For judgment in favor of Plaintiff and against Defendants on all claims asserted in  
9 this Complaint;

10 2. For damages according to proof at trial, including interest;

11 3. For an order preliminarily enjoining Defendants, their agents and representatives,  
12 and all persons in concert or participating with them from issuing any statements that express or  
13 imply that Mr. Montañez is not the creator of Flamin' Hot Cheetos;

14 4. For nominal damages, to the extent the Court determines that Plaintiff has not  
15 established actual damages;

16 5. For all costs, including reasonable attorneys' fees and expenses, incurred by  
17 Plaintiff;

18 6. For restitution, including restitutionary disgorgement of profits Defendants incurred  
19 as a result of their use of Mr. Montañez's story;

20 7. For an award of punitive damages in accordance with Cal. Civ. Code § 3294;

21 8. For prejudgment interest; and

22 9. For any other relief the Court deems just and proper.

23  
24 **DEMAND FOR JURY TRIAL**

25 Plaintiff demands a trial by jury for all of the claims asserted in this Complaint that are so  
26 triable.

1 DATED: July 18, 2024

ELLIS GEORGE LLP

Eric M. George

Serli Polatoglu

David D. Kim

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By: \_\_\_\_\_

ERIC M. GEORGE

Attorneys for Plaintiff Richard Montañez

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>ELLIS GEORGE LLP; Eric M. George, Esq. (SBN 166403); Serli Polatoglu</b> <b>2121 Avenue of the Stars, 30<sup>th</sup> Floor</b> (SBN 311023) <b>Los Angeles, CA 90067</b> TELEPHONE NO.: (310) 274-7100 FAX NO.: (310) 275-5697 EMAIL ADDRESS: egeorge@ellisgeorge.com; spolatoglu@ellisgeorge.com ATTORNEY FOR (Name): Plaintiff, Richard Montañez		<b>FOR COURT USE ONLY</b>  Electronically Filed Superior Court of California County of San Bernardino Rancho Cucamonga District 7/18/2024 5:49 PM By: Kayla Schuebel, DEPUTY			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO</b> STREET ADDRESS: 8303 Haven Avenue MAILING ADDRESS: same as above CITY AND ZIP CODE: Rancho Cucamonga, CA 91730 BRANCH NAME: Civil Division, Rancho Cucamonga District					
CASE NAME: RICHARD MONTAÑEZ vs PEPSICO, INC, ET AL.					
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 5px;"> <b>CIVIL CASE COVER SHEET</b>  <input checked="" type="checkbox"/> <b>Unlimited</b>          (Amount demanded exceeds \$35,000)       </td> <td style="width: 33%; padding: 5px;"> <input type="checkbox"/> <b>Limited</b>          (Amount demanded is \$35,000 or less)       </td> <td style="width: 33%; padding: 5px;"> <b>Complex Case Designation</b>  <input type="checkbox"/> Counter <input type="checkbox"/> Joinder          Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)       </td> </tr> </table>			<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$35,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$35,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
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*Items 1–6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input checked="" type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint ( <i>not specified above</i> ) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition ( <i>not specified above</i> ) (43)
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
3. Remedies sought (*check all that apply*): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (*specify*): 6
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)
- Date: July 18, 2024

Eric M. George

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death

Product Liability (*not asbestos or toxic/environmental*) (24)

Medical Malpractice (45)  
Medical Malpractice—

Physicians & Surgeons  
Other Professional Health Care Malpractice

Other PI/PD/WD (23)

Premises Liability (e.g., slip and fall)

Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)

Intentional Infliction of Emotional Distress

Negligent Infliction of Emotional Distress

Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)

Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)

Defamation (e.g., slander, libel) (13)  
Fraud (16)

Intellectual Property (19)

Professional Negligence (25)  
Legal Malpractice

Other Professional Malpractice (*not medical or legal*)

Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)

Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)

Breach of Rental/Lease

Contract (*not unlawful detainer or wrongful eviction*)

Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)

Negligent Breach of Contract/Warranty

Other Breach of Contract/Warranty

Collections (e.g., money owed, open book accounts) (09)

Collection Case—Seller Plaintiff

Other Promissory Note/Collections Case

Insurance Coverage (*not provisionally complex*) (18)

Auto Subrogation

Other Coverage

Other Contract (37)

Contractual Fraud

Other Contract Dispute

**Real Property**

Eminent Domain/Inverse

Condemnation (14)

Wrongful Eviction (33)

Other Real Property (e.g., quiet title) (26)

Writ of Possession of Real Property

Mortgage Foreclosure

Quiet Title

Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

Commercial (31)

Residential (32)

Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

Asset Forfeiture (05)

Petition Re: Arbitration Award (11)

Writ of Mandate (02)

Writ—Administrative Mandamus

Writ—Mandamus on Limited Court

Case Matter

Writ—Other Limited Court Case Review

Other Judicial Review (39)

Review of Health Officer Order

Notice of Appeal—Labor Commissioner  
Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)

Construction Defect (10)

Claims Involving Mass Tort (40)

Securities Litigation (28)

Environmental/Toxic Tort (30)

Insurance Coverage Claims

(*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)

Abstract of Judgment (Out of County)

Confession of Judgment (*non-domestic relations*)

Sister State Judgment

Administrative Agency Award

(*not unpaid taxes*)

Petition/Certification of Entry of

Judgment on Unpaid Taxes

Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)

Other Complaint (*not specified above*) (42)

Declaratory Relief Only

Injunctive Relief Only (*non harassment*)

Mechanics Lien

Other Commercial Complaint

Case (*non-tort/non-complex*)

Other Civil Complaint

(*non-tort/non-complex*)

**Miscellaneous Civil Petition**

Partnership and Corporate

Governance (21)

Other Petition (*not specified above*) (43)

Civil Harassment

Workplace Violence

Elder/Dependent Adult Abuse

Election Contest

Petition for Name Change

Petition for Relief From Late Claim

Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CIVRS2400356

RICHARD MONTAÑEZ

Case No.:

vs.

CERTIFICATE OF ASSIGNMENT

PEPSICO, INC., FRITO-LAY, INC., ET AL.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the Civil Division, Rancho Cucamonga District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ General

☐ Collection

Nature of Action

Ground

- |                                                           |                                                                                     |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1. Adoption                      | Petitioner resides within the district                                              |
| <input type="checkbox"/> 2. Conservator                   | Petitioner or conservatee resides within the district.                              |
| <input type="checkbox"/> 3. Contract                      | Performance in the district is expressly provided for.                              |
| <input type="checkbox"/> 4. Equity                        | The cause of action arose within the district.                                      |
| <input type="checkbox"/> 5. Eminent Domain                | The property is located within the district.                                        |
| <input type="checkbox"/> 6. Family Law                    | Plaintiff, defendant, petitioner or respondent resides within the district.         |
| <input type="checkbox"/> 7. Guardianship                  | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> 8. Harassment                    | Plaintiff, defendant, petitioner or respondent resides within the district.         |
| <input type="checkbox"/> 9. Mandate                       | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 10. Name Change                  | The petitioner resides within the district.                                         |
| <input type="checkbox"/> 11. Personal Injury              | The injury occurred within the district.                                            |
| <input type="checkbox"/> 12. Personal Property            | The property is located within the district.                                        |
| <input type="checkbox"/> 13. Probate                      | Decedent resided or resides within or had property within the district.             |
| <input type="checkbox"/> 14. Prohibition                  | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 15. Review                       | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 16. Title to Real Property       | The property is located within the district.                                        |
| <input type="checkbox"/> 17. Transferred Action           | The lower court is located within the district.                                     |
| <input type="checkbox"/> 18. Unlawful Detainer            | The property is located within the district.                                        |
| <input type="checkbox"/> 19. Domestic Violence            | The petitioner, defendant, plaintiff or respondent resides within the district.     |
| <input type="checkbox"/> 20. Other                        |                                                                                     |
| <input checked="" type="checkbox"/> 21. THIS FILING WOULD | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT                                 |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

Defendants' facility where Plaintiff was employed and incidents occurred 9535 Archibald Avenue  
NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR ADDRESS

Rancho Cucamonga

CA

91730

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on July 18, 2024 at Los Angeles, CA California.



Signature of Attorney/Party